73D CONGRESS : : : 2D SESSION

JANUARY 3 – JUNE 18, 1934

HOUSE DOCUMENTS

VOL. 62

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

73d Congress, 2d Session - - - - - House Document No. 122

ANNUAL REPORT

OF THE

FEDERAL TRADE COMMISSION

FOR THE

FISCAL YEAR ENDED JUNE 30

1933

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

FEDERAL TRADE COMMISSION

CHARLES H. MARCH, *Chairman*
GARLAND S. FERGUSON, Jr.
WILLIAM E. HUMPHREY
EWIN L. DAVIS
RAYMOND B. STEVENS
OTIS B. JOHNSON, *Secretary*

[The above list shows the personnel of the Commission as of June 30, 1933. The Commission as of Nov. 1, 1933, consisted of the following: Charles H. March, chairman; Garland S. Ferguson, Jr., Ewin L. Davis, James M. Landis, and George C. Mathews. See p. 5]

FEDERAL TRADE COMMISSIONERS—1915–33

Name	State from which appointed	Period of service
Joseph E. Davies	Wisconsin	Mar. 16, 1915–Mar. 18, 1918.
William J. Harris	Georgia	Mar. 16, 1915–May 31, 1918.
Edward N. Hurley	Illinois	Mar. 16, 1915–Jan. 31, 1917.
Will H. Perry	Washington	Mar. 16, 1915–Apr. 21, 1917.
George Rublee	New Hampshire	Mar. 16, 1915–May 14, 1916.
William B. Colver	Minnesota	Mar. 16, 1917–Sept. 25, 1920.
John Franklin Fort	New Jersey	Mar. 16, 1917–Nov. 30, 1919.
Victor Murdock	Kansas	Sept. 4, 1917–Jan. 31, 1924.
Huston Thompson	Colorado	Jan. 17, 1919–Sept. 25, 1926.
Nelson B. Gaskill	New Jersey	Feb. 1, 1920–Feb. 24, 1925.
John Garland Pollard	Virginia	Mar. 6, 1920–Sept. 25, 1921.
John F. Nugent	Idaho	Jan. 15, 1921–Sept. 25, 1927.
Vernon W. Van Fleet	Indiana	June 26, 1922–July 31, 1926.
Charles W. Hunt	Iowa	June 16, 1924–Sept. 25, 1932.
William E. Humphrey	Washington	Feb. 25, 1925–Oct. 7, 1933.
Abram F. Myers	Iowa	Aug. 2, 1926–Jan. 15, 1929.
Edgar A. McCulloch	Arkansas	Feb. 11, 1927–Jan. 23, 1933.
G. S. Ferguson, Jr	North Carolina	Nov. 14, 1927.
Charles H. March	Minnesota	Feb. 1, 1929.
Ewin L. Davis	Tennessee	May 26, 1933.
Raymond B. Stevens	New Hampshire	June 26, 1933–Sept. 25, 1933.
James M. Landis	Massachusetts	Oct. 10, 1933.
George C. Mathews	Wisconsin	Oct. 27, 1933.

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Washington

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544 Market Street
San Francisco

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Chicago

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Seattle

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To the Senate and House of Representatives:

The Federal Trade Commission herewith submits to the Congress its nineteenth annual report for the fiscal year July 1, 1932, to June 30, 1933.

INTRODUCTION

ANNUAL REPORT

OF THE

FEDERAL TRADE COMMISSION

INTRODUCTION

THE COMMISSION ASSUMES NEW FUNCTIONS

Developments occurring toward the close of the fiscal year 1932–33 of which this volume is the annual report, have had a marked and far-reaching effect upon the duties of the Federal Trade Commission.

With the signing of the Securities Act of 1933 on May 27 by President Roosevelt began a new era in the history of the Commission. This act provided that in 40 days from the date of enactment the filing of registration statements for proposed issues of securities sold in interstate commerce or through the mails would be in order and that in 60 days from date of enactment the act would be in full effect.

In the period between May 27 and July 7, which was the first date for filing, the Commission set up a skeleton organization for handling the registration statements as they arrived. During the first month of operation more than 130 registration statements, representing upward of $165,000,000 in securities proposed to be sold in various parts of the country, were filed with the Commission.

Since that time the Commission has increased the personnel of the securities division; but, on account of the lack of adequate funds, has been unable to provide sufficient employees to administer the act without an excessive amount of overtime on the part of all employees engaged in such work.

The Commission believes that a proper and efficient administration of the act will prevent a large part of the frauds that have heretofore been practiced upon the public through the sale of worthless securities.

A report of the Commission's securities registration work showing its significance to the business world and the investor and presenting a history of this most important piece of legislation while in the making, may be found beginning at page 11 of this volume.

In addition to its work under the Securities Act [1] which is perhaps the most outstanding of the permanent reform legislation

[1] Copies of the Securities Act of 1933, Federal Trade Commission Act, National Industrial Recovery Act, Sherman Act, Clayton Act, and Export Trade Act, may be obtained on application to the Federal Trade Commission or Government Printing Office, Washington, D.C.

passed by the Seventy-third Congress, the Commission is also doing its part in aiding the administration with its recovery program: Its chairman is a member of the Special Industrial Advisory Board named by the President for the National Recovery Administration, while the Commission stands ready at all times to carry on investigations as required by the National Industrial Recovery Act,[2] which act calls upon the Commission to make investigations "to enable the President to carry out the provisions of this title", for which purposes "the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended." [2]

Much of the work of the National Recovery Administration itself is based ultimately upon the principles of the Federal Trade Commission Act, the industrial recovery act providing that violation of an industrial code which is considered as the standard of fair competition for an industry, "shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended." [3] However, the National Industrial Recovery Act also provides that no part of that act shall be construed to impair the powers of the Federal Trade Commission.

REGULAR WORK UNDER THE ORGANIC ACT

Pursuant to the Federal Trade Commission Act and other acts the regular work of the Commission has gone on and is continuing. During the fiscal year ending June 30, 1933, the Commission conducted its trade-practice conferences, having approved and accepted the trade-practice conference rules for 17 industries and published the rules of 21 industries. Likewise, the Commission, in its work of preventing and correcting unfair methods of competition and other practices, conducted preliminary investigations of 1,538 cases during the year, dismissing 1,274 for lack of jurisdiction and other causes, and docketing 264 as applications for complaint. One hundred eighty-three cases were settled by stipulation, of which 85 were of the special class involving false and misleading advertising.

The Commission issued 53 complaints against companies and individuals, charging them with various forms of unfair competition held not to be in the public interest, while 66 orders to cease and desist from unfair practices were served on that many respondents. Representative cases of both classes are described, respectively, at pages 69 and 74. In addition to the cases referred to above, some of which involved false and misleading advertising, the Commission, with the aid of its special board of investigation, handled 547 cases dealing exclusively with that type of advertising. Under the Webb-Pomerene

[2] National Industrial Recovery Act, title I, sec. 6 (c).
[3] National Industrial Recovery Act, title I, sec. 3 (b)

law or Export Trade Act, administered by the Commission to promote export trade, a number of American associations engaged solely in export trade were exempted from the provisions of the antitrust laws. Besides this act and the other acts heretofore mentioned, the Commission also administers sections 2, 3, 7, and 8 of the Clayton Act dealing, respectively, with unlawful price discriminations, so-called tying contracts, stock acquisitions which lessen competition or tend to create a monopoly, and interlocking directorates.

GENERAL INVESTIGATIONS

The Federal Trade Commission Act under section 6 (a) gives the Commission power "to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers, * * * and its relation to other corporations and to individuals, associations, and partnerships."

In pursuance of section 6 the Commission conducts general investigations at the request of the President, Congress, or the Attorney General, or upon its own initiative, and makes reports in aid of legislation and in regard to alleged violation of the antitrust laws. More than 70 such inquiries have been conducted during the Commission's existence.

During the fiscal year 1932–33 the Commission completed three general investigations, continued with three others, and began an inquiry to ascertain the salary schedules of officers and directors of certain corporations. Those investigations completed were the chain store, the cottonseed, and the cement industry inquiries, while work continued on power, price bases, and building materials. These investigations and the status of each are described as follows:

Power and gas utilities.—Public hearings were held during the year concerning the affairs of companies which were members of nine large utility groups, which groups, in a recent year, generated about 18 percent of the total electric energy produced in the United States. In the aggregate, during the entire investigation, there will have been taken up companies which represented in a recent year more than 45 percent of the total output for the United States, and more than 80 percent of the electric energy sold by privately owned electric utilities doing an interstate or international business. (See p. 19.)

It is expected that the investigation will be concluded during the fiscal year ending June 30, 1934, and a final report will be submitted to the Senate. The testimony and exhibits introduced in the hearings comprised (Nov. 15, 1933) 59 volumes, of which 45 are now available in printed form, while the remainder will be printed.

Chain stores.—The investigation has been completed and written up in a series of published reports treating of close to 30 different phases of the national chain-store industry. A final report containing the Commission's general conclusions and recommendations will later be issued.

Cottonseed prices.—Investigation completed and final report transmitted to the Senate, May 19, 1933.

Price bases.—Further reports being prepared. (See p. 56.)

Cement industry.—Investigation completed and final report transmitted to the Senate, June 9, 1933.

Building materials.—Final report now under consideration.

Salary inquiry.—Investigation now in progress.

HOW THE COMMISSION WORK IS HANDLED

The work of the Federal Trade Commission may be divided into the following general divisions: Securities registration, legal, general investigations, and administrative.

By virtue of the Securities Act of 1933 the securities division has charge of the Nation-wide registration of proposed issues of securities. The legal division has charge of proceedings against respondents charged with unfair methods of competition as forbidden by the Federal Trade Commission Act and of other practices condemned by the Clayton Act, and with the trial of cases before the Commission and in the courts. This work is carried on through the following officials: Chief examiner, board of review, chief trial examiner, and the chief counsel, who is chief legal adviser to the Commission. There are also the division of trade practice conferences, the special board of investigation for cases of false and misleading advertising, and the foreign-trade work, which is under supervision of the chief counsel. Members of the trial examiners' division are delegated to preside at trial of formal complaints and to sit as special masters in the taking of testimony in investigations conducted pursuant to congressional resolutions as well as at hearings held in pursuance of the Securities Act of 1933. They also arrange settlements of applications for complaint, by stipulations. This method is employed particularly in cases where the practice complained of is not so fraudulent or vicious that protection of the public demands the regular procedure of complaint. The stipulation procedure provides an opportunity for the respondent to enter into a stipulation of the facts and voluntarily agree to cease and desist forever from the alleged unfair methods set forth therein. Such stipulation is subject to the final review and approval of the Commission.

The economic division, under the chief economist, carries on certain of the general inquiries of the Commission, whether directed by the

President, by Congress, or the Attorney General, or by the Commission itself, such as the current investigations regarding power and gas utilities, chain-store systems, and price bases. The economic division carries on that part of the power inquiry which deals with the financial structure, organization, and management of the utilities, although the chief counsel has charge of the examination in public hearings. The chief examiner has cooperated with the economic division in studying legal aspects of the chain-store survey.

The investigations of cottonseed prices, cement industry, and building materials have been in the custody of the chief examiner, the chief counsel furnishing an attorney for work on the cottonseed inquiry, and the economic division cooperating in the cement inquiry.

Responsible directly to the assistant secretary of the Commission, the administrative division conducts the business affairs of the Commission and is made up of units usually found in Government establishments, the functions of such units being governed largely by general statutes. These units are as follows: Accounts and personnel, disbursing office, docket, publications, editorial service, mails and files, supplies, stenographic, hospital, and the library.

THE COMMISSIONERS AND THEIR DUTIES

The Federal Trade Commission is one of the independent agencies of the Government, consisting of five commissioners appointed by the President and confirmed by the Senate. Not more than three of these members may belong to the same political party.

The term of office of a commissioner is 7 years, as provided in the Federal Trade Commission Act. The term of each commissioner dates from the 26th of September preceding the time of his appointment, September 26 marking the anniversary of the passage of the act in 1914.

At the close of the fiscal year the Commission was composed of the following members: Charles H. March, of Minnesota, chairman; Garland S. Ferguson, Jr., of North Carolina; William E. Humphrey, of Washington; Ewin L. Davis, of Tennessee; and Raymond B. Stevens, of New Hampshire. Commissioner Davis was appointed by President Roosevelt in May to succeed former Commissioner C. W. Hunt while Commissioner Stevens was appointed in June to succeed the late Edgar A. McCulloch. Commissioner Stevens' term expired September 25, 1933; the vacancy was filled October 7 when President Roosevelt appointed James M. Landis, of Massachusetts. On the same day the President declared the position filled by Commissioner Humphrey vacant and appointed George C. Mathews, of Wisconsin, to take his place.

Mr. March was chosen by the Commission as its chairman for the calendar year of 1933, succeeding Commissioner Humphrey. Each

January a member of the Commission is designated to serve as chairman for the succeeding year. The position rotates so that each commissioner serves at least one year during his term of office. The chairman presides at meetings of the Commission and signs the more important official papers and reports at the direction of the Commission.

Official activities of the commissioners are generally similar in character although each assumes broad supervisory charge of a different division of work. One commissioner may maintain contact with the securities division, another with the chief counsel and his staff or the chief examiner, and so on; however, all matters scheduled to be acted upon by the Commission are dealt with by the Commission as a whole or a quorum thereof; consequently, the facts in all cases to come before the whole body are previously placed before the commissioners individually for their consideration.

The commissioners meet regularly for transaction of official business on Mondays, Wednesdays, and Fridays at the Commission's offices in Washington and very frequently on adjournment or call of the chairman. They also hear final arguments in cases before the Commission and arguments on motions of the attorneys for the Commission or the respondents. Besides these duties and their conferences with persons discussing official business, the members have a large amount of reading and study in connection with the numerous matters before them for decision.

The commissioners individually preside at trade-practice conferences held for industries in various parts of the country.

The Commission has a secretary, who is its executive officer.

PUBLICATIONS OF THE COMMISSION

Publications of the Commission, reflecting the character and scope of its work, vary in content and treatment from year to year, especially those documents relating to general business inquiries. Such studies are illustrated by appropriate charts, tables, and statistics. They deal not only with current developments in an industry but contain scientific and historical background that is usually of value not only to members of the industry concerned but to the student and the writer as well. Many of these reports have been used as textbooks in the universities.

The findings and orders of the commission as published contain interesting material regarding business and industry. They tell, case by case, the story of unfair competition in interstate commerce and of the efforts put forth by the commission to correct and eliminate it.

Wide discretion in issuing publications is given the Commission by law. The Federal Trade Commission Act, section 6 (f), says the Commission shall have power—

To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

PART I. SECURITIES REGISTRATION

SECURITIES ACT OF 1933

CORPORATION OF FOREIGN BONDHOLDERS ACT, 1933

LEGISLATIVE HISTORY

ADMINISTRATION OF THE SECURITIES ACT

REGISTRATION REQUIREMENTS

COMMISSION ISSUES FIRST STOP ORDERS

16326—33——2

PART I. SECURITIES REGISTRATIONS

SECURITIES ACT OF 1933

This law constitutes title I of Public No. 22, approved May 27, 1933. It was one of the most important pieces of legislation passed by the Seventy-third Congress. It is not an emergency measure but a permanent addition to our regulatory legislation. The purpose of the act is to "provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof." The underlying aim of the act is, therefore, to offer protection to the public purchasing securities. This protection is sought to be achieved by requiring full disclosure of the facts pertinent to the formation of an intelligent appraisal of the value of a security, and by affording sanctions, civil and criminal, against the parties failing to make such fair disclosures. The applicability of the act is limited to securities entering interstate or foreign commerce or the mails as being within the province of the Federal regulatory legislation. The act does not permit judgment by the Federal Trade Commission, which is charged with its administration, of the value or soundness of any security. The function of the Commission is to see that full and accurate information is made available to purchasers and the public, and that no fraud is practiced, in connection with the sale of securities.

The essential features of this legislation may be reduced broadly to the following three heads: (1) Full information concerning new issues of securities entering interstate or foreign commerce or the mails on or after July 27, 1933, must be filed with the Federal Trade Commission by means of a registration statement; (2) civil and criminal liability is imposed for failure to file such information, or the careless filing of misleading or inadequate information; (3) the Commission is given administrative authority to prevent fraud in the distribution of old and new issues of securities in interstate or foreign commerce, or through the mails, and civil and criminal liabilities are imposed in regard to such distribution.

It will be the purpose of the Federal Trade Commission, under authority of this act, to prevent further exploitation of the public by the sale of fraudulent and worthless securities through misrepresentation, to cause to be placed adequate and true information before investors, and to protect honest enterprise seeking capital by honest representations against the competition made by securities offered through dishonest promotion and misrepresentation. While the

Commission intends to administer the act so as to give purchasers of securities full and accurate information, at the same time neither the act nor its administration will offer any serious obstacle to the legitimate financing of legitimate business. Even speculative securities may still be offered, and the public will be as free as ever to buy them, since this act is meant in no way to substitute the judgment of the Government for that of the individual investor as to the wisdom or advisability of making any particular investment.

CORPORATION OF FOREIGN BONDHOLDERS ACT, 1933

This act is title II of Public No. 22, approved May 27, 1933. The purpose of the act is that of "protecting, conserving, and advancing the interests of the holders of foreign securities in default." This title, however, is not in effect, since, in accordance with section 211, its becoming effective is contingent upon a proclamation by the President.

LEGISLATIVE HISTORY

The Democratic platform of 1932 provided as follows:

We advocate protection of the investing public by requiring to be filed with the Government and carried in advertisements of all offerings of foreign and domestic stocks and bonds true information as to bonuses, commissions, principal invested, and interests of the sellers.

On March 29, 1933, the President requested legislation on the subject by the following special message to the Congress:

To the Congress.

I recommend to the Congress legislation for Federal supervision of traffic in investment securities in interstate commerce.

In spite of many State statutes the public in the past has sustained severe losses through practices neither ethical nor honest on the part of many persons and corporations selling securities.

Of course, the Federal Government cannot and should not take any action which might be construed as approving or guaranteeing that newly issued securities are sound in the sense that their value will be maintained or that the properties which they represent will earn profit.

There is, however, an obligation upon us to insist that every issue of new securities to be sold in interstate commerce shall be accompanied by full publicity and information, and that no essentially important element attending the issue shall be concealed from the buying public.

This proposal adds to the ancient rule of caveat emptor, the further doctrine, "Let the seller also beware." It puts the burden of telling the whole truth on the seller. It should give impetus to honest dealing in securities and thereby bring back public confidence.

The purpose of the legislation I suggest is to protect the public with the least possible interference to honest business.

This is but one step in our broad purpose of protecting investors and depositors. It should be followed by legislation relating to the better supervision of the purchase and sale of all property dealt in on exchanges, and by legislation to correct unethical and unsafe practices on the part of officers and directors of banks and other corporations.

What we seek is a return to a clearer understanding of the ancient truth that those who manage banks, corporations, and other agencies handling or using other people's money are trustees acting for others.

Simultaneously, there were introduced in the House and Senate identical bills, H.R. 4314 and S. 875, covering the proposed legislation. Public hearings were held in March and April 1933, before the House Committee on Interstate and Foreign Commerce and before the Senate Committee on Banking and Currency, to which committees the respective bills had been referred.

The House committee thereafter prepared a new bill, which on May 3, 1933, was introduced by its chairman as H.R. 5480. The following day, May 4, the House committee favorably reported H.R. 5480 and recommended its passage with certain minor amendments. (H.Rept. 85, 73d Cong., 1st Sess.) On May 5, 1933, the bill (H. R. 5480) was considered as in Committee of the Whole, and passed by the House as reported, with the committee amendments. The bill was then messaged to the Senate on May 8, 1933.

In the meantime the Senate committee, April 27, 1933, had favorably reported its bill S. 875, with an emendment in the nature of a substitute, and recommended that the bill as amended be passed. (S.Rept. 47, 73d Cong., 1st Sess.)

On May 8 the Senate considered its bill (S. 875), agreed to the language as reported with certain amendments, including title II which was added on the floor of the Senate, and thereupon passed the House bill (H.R. 5480) with the Senate measure attached as an amendment in the nature of a substitute. The legislation was then committed to conference between the two Houses. After deliberation the conference agreed upon and reported to their respective Houses the language as it now appears in the statute. The conference report was agreed to by the House, May 22, 1933 (H.Rept. 152, 73d Cong., 1st Sess.), and by the Senate, May 23, 1933. The bill thus passed was approved by the President, May 27, 1933.

ADMINISTRATION OF THE SECURITIES ACT

To administer the law the Commission has organized a securities division, and has published rules, regulations and forms as required by the act. An interim rule regarding registration was issued by the Commission, June 29, 1933, followed on July 6 by the promulgation of the first set of general rules and regulations, and a form of registration statement. Additional or supplemental rules have since been issued, and it is anticipated that others will be promulgated from time to time as a result of experience in the operation of the law.

The forms described below for the making of registration statements have been approved by the Commission and promulgated.

Form A-1 is the prototype of the various forms, and the one to be used for the ordinary type of corporate security, to be used also when there is not one especially designed to meet a particular kind of security. The other forms are variants of A-1, with changes, additions, and omissions necessary to meet the circumstances of particular securities. Forms D-1 and D-2 are to be used in the case of reorganizations: D-1 for the registration of certificates of deposit; D-2 for the securities to be issued pursuant to a plan of readjustment or reorganization. Form C-1 is to be used for unincorporated investment trusts not having a board of directors of the fixed or restricted management type. Other forms, to meet other special classes of securities, are being prepared; particularly forms for foreign securities issued by private and governmental agencies.

REGISTRATION REQUIREMENTS

Before any security may be lawfully sold in interstate commerce or by use of the mails there must be on file with the Commission and in effect a registration statement disclosing full facts regarding the security. This requirement as to registration, however, applies only to securities which are not of the classes specifically exempted, which cannot be enumerated here on account of the limited space.

The registration is to be made by means of a form prescribed by the Commission, and must contain the information required by the statute and the Commission's rules and regulations issued thereunder. The statements must be filed in triplicate and must be accompanied by the payment of a minimum fee of $25, or one one hundredth of 1 percent of the maximum aggregate price at which the securities are proposed to be offered. The fee and all other receipts under the act are covered into the Treasury of the United States.

Neither registration nor the operation of any other provision of the act involves passing upon the merits of a security or the giving of any governmental guarantee, sanction, or approval thereof.

With the exception of any portion of a contract the disclosure of which the Commission determines would impair the value thereof and would not be necessary for the protection of investors, all information filed with the statement is open for public examination at the office of the Commission, and copies may be purchased from the Commission (typewritten copies at 25 cents a page; photostats at 20 cents a page). Material information relating to the security also reaches purchasers through the prospectus which sellers are required to furnish.

Unless action is taken by the Commission to the contrary, registration statements become effective 20 days after filing. An earlier effective date exists, however, as to certain foreign securities.

If it appears to the Commission that any registration statement is incomplete or inaccurate on its face, the Commission may, before the statement becomes effective and upon notice with opportunity for hearing, refuse to permit the registration statement to become effective until it shall have been amended. (Sec. 8 (b).) If it appears to the Commission at any time (even though the registration statement has already become effective) that the registration includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice and opportunity for hearing, issue a stop order suspending the effectiveness of the registration statement until the same shall have been amended in accordance with such order. (Sec. 8 (d).)

COMMISSION ISSUES FIRST STOP ORDERS UNDER SECURITIES ACT

The Commission in August issued its first stop order under the securities act suspending the effectiveness of the registration statement of Speculative Investment Trust, Fort Worth, Tex., until the statement should be amended to comply with the requirements of the act and the Commission's regulations.

Second and third stop orders were directed to American Gold Mines Consolidation, Inc., New York, and Industrial Institute, Inc., Jersey City, suspending the effectiveness of their registration statements until amended to comply with the legal requirements.

An order was entered refusing to permit the registration statement of Transcontinental Precious Metals Co., Flint, Mich., to become effective until certain missing data were furnished. This order was subsequently lifted and the registration statement allowed to become effective.

Clyde H. Creighton, Dallas, Tex., oil and gas promoter, also was directed to supply certain information before his registration statement could be made effective.

The Commission also suspended the effectiveness of the registration of Mitchell-Hearst Gold Syndicate, Ltd., of Toronto, Canada, and Southern Crude Corporation, of Los Angeles, Calif., until deficiencies in their statements could be remedied.

Registration statements were first admitted to be filed under the act on July 7, 1933, but the requirements that no new issues should be offered to the public unless they had been registered did not become effective until July 27, 1933. Since that date through October 6, 1933, 318 registration statements had been filed with the Commission covering issues aggregating more than $280,000,000. Of the statements filed through October 6, 169 had become effective, 25 had been withdrawn, stop orders were outstanding against 6, while 118 were still pending examination.

Though stop or refusal orders have been issued in only 7 cases, the policy of permitting a registrant to withdraw his registration statement and thereby be unable to offer the securities to the public inasmuch as no registration statement is in effect, has been employed in cases where the statement was so inadequately prepared that it would obviously take considerable time for the registrant to meet the requirements of the act. Stop-order proceedings have been employed usually in cases where the registrant disclosed an unwillingness to furnish the required material or to respond promptly to the Commission's suggestions for material that the act insists should be disclosed.

PART II. GENERAL INVESTIGATIONS

POWER AND GAS UTILITIES

CHAIN STORES

COTTONSEED PRICES

PRICE BASES

CEMENT INDUSTRY

BUILDING MATERIALS

PART II. GENERAL INVESTIGATIONS

POWER AND GAS UTILITIES

HOLDING COMPANIES—FINANCIAL STRUCTURE AND PRACTICES

Pursuant to Senate Resolution 83, Seventieth Congress, first session, and section 6 of the Federal Trade Commission Act,[1] the Commission continued its investigation of large utility holding companies, subholding companies, management, construction and finance companies and numerous typical operating companies. The investigation is being conducted to ascertain and report the facts as to their complicated financial structures, the growth of capital assets and capital liabilities, methods of issuing (and, in some instances, of marketing) various stocks and securities and the cost thereof, including organization expenses, commissions, discounts and redemption charges, the capitalization of interests in management and other types of supervisory and controlling contracts, the methods of creation of capital surplus and the payment of dividends therefrom, the treatment of stock dividends as earnings, the taking over by holding companies of undistributed surpluses of subsidiaries as income and other practices.

The pertinent facts relating to the various service contracts in use from time to time and the fees charged in connection therewith for management, supervision, servicing, engineering, construction, and financing are also being ascertained. Further examinations have been made of the physical condition and efficiency of the plants and the equipment of the operating companies as well as of the organization and efficiency of management.

During the fiscal year 1932–33 public hearings have been held on the dates indicated, and testimony and reports presented on the groups and companies following.

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[1] Section 6 of the Federal Trade Commission Act provides that—

"The Commission shall have power—

"(a) To gather and compile information concerning and to investigate from time to time the organization, business conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

* * * * * * *

"(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation."

Company	Hearings began—
ASSOCIATED GAS & ELECTRIC CO. GROUP	
Associated Electric Co	Sept. 13, 1932
Do	Do.
Associated Properties, Inc	Do.
Associated Utilities Merchandising Co., Inc	Sept. 16, 1932
Binghamton Light, Heat & Power Co	Sept. 27, 1932
Clarion River Power Co	Oct. 4, 1932
Consumers Construction Co	Sept. 16, 1932
Johnstown Fuel Supply Co	Sept. 30, 1932
Management Holding Corporation	Sept. 15, 1932
Metropolitan Edison Co	Feb. 2, 1933
New England Gas & Electric Association (and subsidiary operating companies)	Nov. 17, 1932
New York Electric Co	Sept. 20, 1932
New York State Electric & Gas Corporation	Sept. 21, 1932
Pennsylvania Electric Co	Dec. 6, 1932
Pennsylvania Electric Corporation	Sept. 27, 1932
The J. G. White Management Corporation	Sept. 16, 1932
Utilities Purchasing & Supply Corporation	Do.
Utility Management Corporation	Sept. 15, 1932
CENTRAL PUBLIC SERVICE CORPORATION GROUP	
Central Public Service Co	Apr. 19, 1933
Central Public Service Corporation	Apr. 12, 1933
Southern Cities Public Service Co	May 4, 1933
CITIES SERVICE CO. GROUP	
Arkansas Natural Gas Corporation	June 21, 1933
Cities Service Securities Co	Apr. 25, 1933
Lakeside Construction Co	July 6, 1933
Public Service Co. of Colorado	June 28, 1933
COLUMBIA GAS & ELECTRIC CORPORATION GROUP	
American Fuel & Power Corporation	Mar. 28, 1933
Cincinnati Gas Transportation Co	Dec. 23, 1932
Columbia Corporation	Oct. 28, 1932
Columbia Engineering & Management Corporation	Do.
Columbia Gas & Electric Corporation	Oct. 18, 1932
Columbia Gas Construction Co	Nov. 1, 1932
Columbia Securities Co	Do.
Huntington Gas Co	Dec. 21, 1932
Manufacturers Light & Heat Co	Nov. 14, 1932
Union Gas & Electric Co	Nov. 2, 1932
United Fuel Gas Co	Dec. 19, 1932
MIDDLE WEST UTILITIES CO. GROUP[1]	
Corporation Securities Co. of Chicago	Feb. 14, 1933
Insull, Sons & Co	Feb. 15, 1933
Insull Utilities Investments, Inc	Jan. 31, 1933
Mississippi Valley Utilities Investment Co	Feb. 9, 1933
National Electric Power Co	Feb. 1, 1933
National Public Service Corporation	Do.
Public Service Trust	Feb. 16, 1933
Seaboard Public Service Co	Feb. 24, 1933
Second Utilities Syndicate, Inc	Feb. 25, 1933
NIAGARA HUDSON POWER CORPORATION GROUP	
Niagara, Lockport & Ontario Power Co	June 12, 1933
St. Lawrence Securities Co	May 1, 1933
Syracuse Lighting Co	Jan. 26, 1933
Utica Gas & Electric Co	May 2, 1933
NORTH AMERICAN LIGHT & POWER CO. GROUP	
North American Light & Power Co. (physical properties)	Jan. 17, 1933
THE UNITED CORPORATION GROUP	
The United Corporation	Mar. 17, 1933
THE UNITED GAS IMPROVEMENT CO. GROUP	
The American Gas Co	May 15, 1933
Connecticut Electric Service Co	May 17, 1933
Connecticut Electric Syndicate	May 16, 1933
Connecticut Light & Power Co	May 18, 1933
Eastern Connecticut Power Co	May 19, 1933
Rockville-Willimantic Lighting Co	May 23, 1933
United Engineers & Constructors, Inc	May 15, 1933
The United Gas Improvement Co	Mar. 7, 1933
Waterbury Gas Light Co	May 23, 1933
UTILITIES POWER & LIGHT CORPORATION GROUP	
Utilities Power & Light Corporation	June 5, 1933

[1] The material in the following reports for this group was taken from reports by auditors to the receivers of the respective companies.

From the beginning of the investigation to the end of the fiscal year, 1932–33, groups and companies with an aggregate gross revenue for 1929 of nearly $1,400,000,000 have been made the subjects of examinations at public hearings under the Senate resolution. The testimony and exhibits of these companies have been or are being printed in volumes as a part of Senate Document No. 92, Seventieth Congress, first session. The list is as follows:

Company	Testimony and exhibits printed in—
American Gas & Electric Co	Parts 21 and 22.
Appalachian Electric Power Co	Do.
Indiana & Michigan Electric Co	Do.
Ohio Power Co	Do.
The Scranton Electric Co	Do.
Associated Gas & Electric Co	Parts 45 and 46.
Associated Electric Co	Part 46.
Associated Properties, Inc	Do.
Associated Utilities Merchandising Co., Inc	Do.
Binghamton Light, Heat & Power Co	Do.
Clarion River Power Co	Do.
Consumers Construction Co	Do.
Johnstown Fuel Supply Co	Do.
Management Holding Corporation	Do.
Metropolitan Edison Co	Part 50.
New England Gas & Electric Association (and subsidiary operating companies)	Part 48.
New York Electric Co	Part 46.
New York State Electric & Gas Corporation	Do.
Pennsylvania Electric Co	Part 48.
Pennsylvania Electric Corporation	Part 46.
Staten Island Edison Co	Do.
Utilities Purchasing & Supply Corporation	Do.
Utility Management Corporation	Do.
White, The J. G., Management Corporation	Do.
Central Public Service Corporation Group	
Central Public Service Co	Part 52.
Central Public Service Corporation	Do.
Southern Cities Public Service Co	Part 53.
Cities Service Co. Group:	
Arkansas Natural Gas Corporation	Part 55.
Cities Service Securities Co	Part 53.
Lakeside Construction Co	Part 55.
Public Service Co. of Colorado	Do.
Columbia Gas & Electric Corporation Group:	
American Fuel & Power Corporation	Part 52.
Cincinnati Gas Transportation	Part 49.
Columbia Corporation	Part 47.
Columbia Engineering & Management Corporation	Do.
Columbia Gas & Electric Corporation	Do.
Columbia Securities Co	Do.
Huntington Gas Co	Part 49.
Manufacturers Light & Heat Co	Part 47.
Union Gas & Electric Co	Do.
United Fuel Gas Co	Part 49.
Electric Bond & Share Co	Parts 23 and 24.
American Power & Light Co	Do.
Inland Power & Light Co	Part 35.
Minnesota Power & Light Co	Part 26.
Nebraska Power Co	Part 41.
Northwestern Electric Co	Part 35.
Pacific Power & Light Co	Do.
Washington Water Power Co	Part 29.
Electric Bond & Share Securities Corporation	Parts 23 and 24.
Electric Investors, Inc	Do.
Electric Power & Light Corporation	Do.
Arkansas Power & Light Co	Part 42.
Idaho Power Co	Part 35.
Louisiana Power & Light Co	Part 43.
Mississippi Power & Light Co	Part 42.
Utah Power & Light Co	Part 45.
Western Colorado Power Co	Do.
National Power & Light Co	Part 25.
Carolina Power & Light Co	Part 26.
Phoenix Utility Co	Parts 23 and 24.
Phoenix Utility Co. (Minnesota operations)	Part 35.
Two Rector Street Corporation	Parts 23 and 24.

Company	Testimony and exhibits printed in—
W. B. Foshay Co	Part 25.
Foshay Building Corporation	Do.
Investors National Corporation	Do.
Public Utilities Consolidated Corporation	Do.
Middle West Utilities Co	Part 38.
Central Illinois Public Service Co	Part 44.
Corporation Securities Co.[1]	Part 50.
Electric Management and Engineering Corporation	Part 40.
Insull, Sons & Co.[1]	Part 50.
Insull Utilities Investments [1]	Do.
L. E. Myers Co.[1]	Part 38.
Mississippi Valley Utilities Investment Co.[1]	Parts 38 and 50.
National Electric Power Co.[1]	Parts 40 and 50.
National Public Service Corporation [1]	Do.
Florida Power Corporation	Parts 41 and 42.
Georgia Power & Light Co	Part 42.
Tide Water Power Co	Part 41.
Tide Water Power Co. (properties and operation)	Part 44.
New England Public Service Co	Part 42.
National Light, Heat & Power Co	Part 44.
Twin State Gas & Electric Co	Do.
North West Utilities Co	Part 38.
Public Service Trust [1]	Part 50.
Seaboard Public Service Co.[1]	Part 51.
Second Utilities Syndicate, Inc.[1]	Do.
New England Power Association	Parts 31 and 32.
Deerfield Construction Co	Do.
International Paper & Power Co	Do.
New England Power Co	Do.
New England Power Construction Co	Do.
Power Construction Co	Do.
Sherman Power Construction Co	Do.
Connecticut Valley Power Exchange	Do.
Niagara Hudson Power Corporation Group:	
Niagara, Lockport & Ontario Power Co	Part 54.
St. Lawrence Securities Co	Part 53.
Syracuse Lighting Co	Part 50.
Utica Gas & Electric Co	Part 53.
North American Co	Parts 33 and 34.
Central Mississippi Valley Electric Properties	Do.
Great Western Power Co. of California	Part 39.
Midland Counties Public Service Corporation	Do.
Mississippi River Power Co	Parts 35 and 34.
North American Edison Co	Do.
Pacific Gas & Electric Co	Part 39.
San Joaquin Light & Power Corporation	Do.
Union Electric Light & Power Co	Parts 33 and 34.
Union Electric Light & Power Co. (Illinois)	Do.
Western Power Corporation	Do.
Do	Part 39.
North American Light & Power Co	Do.
North American Light & Power Co. (physical properties)	Part 50.
Southeastern Power & Light Co	Part 27.
Alabama Power Co	Part 30.
Georgia Power Co	Part 28.
Standard Gas & Electric Co	Part 36.
Louisville Gas & Electric Co	Parts 37 and 38.
Louisville Gas & Electric Securities Co	Part 37.
Minneapolis General Electric Co	Part 43.
Northern States Power Co	Do.
Oklahoma Gas & Electric Co	Part 36.
The United Corporation Group:	
The United Corporation	Part 52.
The United Gas Improvement Co. Group:	
American Gas Co	Part 54.
Connecticut Electric Service Co	Do.
Connecticut Electric Syndicate	Do.
Connecticut Light & Power Co	Do.
Eastern Connecticut Power Co	Do.
Rockville-Willimantic Lighting Co	Part 54.
The United Gas Improvement Co	Part 51.
United Engineers & Connstructors, Inc	Part 54.
Waterbury Gas Light Co	Do.
Utilities Power & Light Corporation Group:	
Utilities Power & Light Corporation	Do.

[1] The material in these reports was taken from reports by auditors to the receivers of the respective companies.

PROCEDURE AND SCOPE OF INQUIRY

The testimony presented is chiefly that of the Commission's own examiner experts who have personally examined the accounting and other records of the various holding company groups and studied such records and the financial and engineering practices, as well as the supervising control by the holding companies upon their operating companies under various forms of supervision contracts. Officers of the corporations have also been called to testify on special or specific points. At all hearings counsel representing the corporations whose records and transactions are under discussion have been present with full privilege to present objections, to cross-examine, and to offer testimony in behalf of such corporations.

The testimony and exhibits brought out by the investigation of the publicity and propaganda which has been conducted through utility associations are printed in parts 1 to 20 of the Senate print, together with accompanying volumes of exhibits with some additional material in part 35. The expenditures for the publicity work conducted by the public-relations sections of the several groups and companies are being presented in connection with other testimony and facts touching each such group and company.

Records of the hearings, including transcripts of testimony and reports and charts introduced as exhibits in accordance with Senate resolution, are transmitted to the Senate on the 15th of each month. Those so transmitted from the beginning of the investigation through to the close of this fiscal year have been, or are being, printed as Senate Document No. 92, Seventieth Congress, first session, parts 1 to 55, inclusive. Of these, parts 1 through 45, inclusive, are now available to the public, while parts 46 through 59, inclusive, are in the hands of the printer.

COMPANIES ON WHICH ACCOUNTING EXAMINATIONS ARE BEING MADE

The field examination of the business and relations of various electric and gas public utility companies continued throughout the year covered by this report, partly in extending the inquiry into groups which had not then been considered in the hearings, but more especially in broadening the previous inquiry into particular groups on which hearings had already been held. The public utilty groups in which examination was made during the fiscal year are Cities Service Co. group, Niagara Hudson Power Corporation group, Columbia Gas & Electric Corporation group, Central & Southwest Utilities Co. group, Associated Gas & Electric Co. group, Central Public Service Corporation group, the United Gas Improvement Co. group, North American Light & Power Co. group, Midland United Co. group, Utilities Power & Light Corporation group, and the Stone and Webster group. A report is also being prepared on the Byllesby Engi-

neering & Management Corporation, which has supervision over the companies of the Standard Gas & Electric Co. group.

It is estimated that in the production of electric energy the combined output of these 11 groups in 1930 was more than 19 percent of the total for the United States, with an interstate or international movement of about 25 percent of this production.

SCOPE OF PUBLIC HEARINGS IN 1932–33

Hearings were held and reports put into the record during the fiscal year ended June 30, 1933, on certain companies in the Middle West Utilities Co. group, North American Light & Power Co. group, Associated Gas & Electric Co. group, Central Public Service Corporation group, Niagara Hudson Power Corporation group, the United Gas Improvement Co. group, Cities Service Co. group, Columbia Gas & Electric Corporation group, and Utilities Power & Light Corporation.

These hearings covered various holding and management companies as well as operating companies within these several groups. Taking these nine groups as a whole, they generated more than 17,208,201,086 kilowatt-hours of electric energy in 1930, or about 18 percent of the total quantity generated in the United States for that year. In connection with the operations of these nine groups, about 4,115,427,959 kilowatt-hours or about 24 percent of the total moved in interstate commerce. Companies of the Columbia Gas & Electric Corporation group, Associated Gas & Electric Co. group, and the Cities Service Co. group dealt largely in natural gas. The companies within these three groups transmitted interstate 141,883,046,000 cubic feet of gas (almost wholly natural gas) during the year 1930, which was 37.28 percent of the total amount of the interstate movement of gas in the United States for that year.

A hearing was also held on a report on the intercorporate relations among the companies controlling and controlled by the United Corporation, which is commonly known as a Morgan-controlled company. Reports were also introduced on the cash and securities received by the United Corporation from its organizers and the cost thereof to the organizers. Testimony on the characteristics of the physical properties of the companies in which the United Corporation had investments was also heard.

ASSOCIATED GAS & ELECTRIC CO.

Hearings on Associated Gas & Electric Co. were begun near the close of the fiscal year ended June 30, 1932. The Associated Gas & Electric System is controlled by Associated Gas & Electric Properties, a Massachusetts voluntary association, which in turn is controlled by H. C. Hopson and J. I. Mange. Associated Gas & Electric Co. controlled close to 180 operating companies, December 31, 1929.

Its electric and gas companies operate in 22 States, as follows: New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, West Virginia, Delaware, South Carolina, Florida, Ohio, Indiana, Illinois, Kentucky, Tennessee, Oklahoma, Arkansas, Arizona, Texas, and Louisiana; also in the Maritime Provinces of Canada and in the Philippine Islands.

The total operating revenues of companies in the system from electric, gas, water, transportation, and other services in 1929, according to reports of the company, aggregated $68,903,254 in 1929. The total income reported by the holding company, Associated Gas & Electric Co., in 1929, was $48,815,756.

The consolidated balance sheet issued by Associated Gas & Electric Co. as of December 31, 1929, showed a total of $673,174,481 for "Plant, property, and franchises", and total assets of $962,117,862. The Associated Gas & Electric Co. and subsidiaries had outstanding long-term debt of $468,509,770 on that date, $71,481,104 in preferred stock, and $240,689,961 of different classes of common stock, trust certificates, etc.

MIDDLE WEST UTILITIES CO. GROUP

Hearings were held during the fiscal year 1932–33 on the following companies in the Middle West Utilities group: Corporation Securities Co. of Chicago; Insull, Sons & Co., Inc.; Insull Utility Investments, Inc.; Mississippi Valley Utilities Investment Co.; Public Service Trust; Second Utilities Syndicate, Inc.

These companies are largely investment companies superimposed on the Middle West Utilities Co. and its numerous subsidiary holding and operating companies and were used to keep control of that company and its affiliates in the hands of a few people, principally members of the Insull family. These companies are at this time all in the hands of receivers and the reports were prepared from material in the hands of receivers.

Other reports were prepared and hearings held on Seaboard Public Service Co., National Electric Power Co., and National Public Service Corporation, which were subsidiary holding companies of the Middle West Utilities Co. group. These three companies are now either in receivership or bankruptcy. The latter two reports were in addition to previous reports prepared on these companies which were introduced into the record early in 1932.

A report is now being prepared on the affairs of Middle West Utilities Co. itself, from September 1930 to April 16, 1932, supplementing reports on this company already part of the public record. This report will be introduced into the public record in the forthcoming fiscal year.

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CENTRAL PUBLIC SERVICE CORPORATION GROUP

Hearings were held during the fiscal year on the Central Public Service Corporation, Central Public Service Co., and Southern Cities Public Service Co. The Central Public Service Corporation controlled, through subsidiary holding companies, operating companies situated in 24 States and 7 foreign countries, or provinces, in the year 1930. During that year its electrical sales amounted to 589,043,472 kilowatt-hours, and its gas sales amounted to 16,613,-243,000 cubic feet. The Central Public Service Corporation was organized under the name of the Southern Gas & Power Corporation in November 1923 and at December 31, 1931, the balance sheet issued by the corporation showed total assets of $158,221,059, an increase of nearly twenty-fold of the assets recorded on December 31, 1924. The consolidated earnings statement of the Central Public Service Corporation group for the year 1931 showed $4,514,619.23 after the payment of operating expenses. This corporation is now in bankruptcy.

The Central Public Service Co. which controls the Central Public Service Corporation, through common stock ownership, is now in the hands of receivers, as is also the Central Gas & Electric Co., one of the subsidiary holding companies. However, before receivers were appointed for the Central Public Service Corporation, it had effected a plan of reorganization and had divested itself of the stocks of many of its operating public-utility companies.

NIAGARA HUDSON POWER CORPORATION

The Niagara Hudson Power Corporation was incorporated in 1929, in New York, to acquire control of Buffalo, Niagara & Eastern Power Corporation, Mohawk Hudson Power Corporation, and Northeastern Power Corporation through the exchange of stocks. These three companies in turn control operating public-utility companies. Other operating public-utility companies have been acquired so that as of December 31, 1931, the consolidated balance sheet of the Niagara Hudson Power Corporation and its subsidiaries records total assets of $799,019,858, and its consolidated income account for the year ended December 31, 1931, showed total operating revenues of $77,449,121.

The Niagara Hudson Power Corporation group serves 641,989 customers with electricity and 242,786 customers with gas, all in the State of New York.

During the year 1931 its total electric sales were 5,159,069,101 kilowatt-hours, and its total gas sales were 8,159,812,100 cubic feet. During the fiscal year 1932–33 reports were introduced into the record and hearings held on four of the subsidiary companies of this group. Other reports are being prepared and hearings will be held during the current fiscal year.

THE UNITED GAS IMPROVEMENT CO.

Hearings were held during the fiscal year 1932–33 on the United Gas Improvement Co. and on its subsidiary companies, principally those operating in the State of Connecticut. The company's utility subsidiaries served communities with a total population estimated at more than 5,500,000. During the year 1931 its sales of electricity amounted to 3,302,216,000 kilowatt-hours, and its sales of gas amounted to 19,053,569,000 cubic feet. This last figure does not include the gas sold by the Philadelphia Gas Works Co. which is a municipally-owned plant operated by the United Gas Improvement Co. under a contract with the city of Philadelphia. A consolidated balance sheet of the United Gas Improvement Co. and its subsidiaries as of December 31, 1930, shows total assets of $786,734,493, and a combined earning statement for the year ended December 31, 1930, for the United Gas Improvement Co. and its subsidiaries, excluding the Philadelphia Gas Works Co., shows total operating revenues of $108,374,496.

One other report is in preparation on a subsidiary company of the United Gas Improvement Co. group.

COLUMBIA GAS & ELECTRIC CORPORATION GROUP

The Columbia Gas & Electric Corporation is important because it was the first company considered in the hearings for which natural gas was the principal product of the corporation rather than electricity.

During the year 1930 the Columbia Gas & Electric Corporation system sold 132,148,546,000 cubic feet of gas, most of which was natural gas produced in West Virginia and adjacent States. In that year the company operated 851,820 acres of gas lands and held in reserve 7,142,486 acres of gas lands.

A consolidated balance sheet of the Columbia Gas & Electric Corporation and subsidiary companies as of December 31, 1930, shows total assets of $716,351,032, and the consolidated income account for that year shows a gross revenue of $96,129,808.

THE CITIES SERVICE CO. GROUP

During the fiscal year 1932–33 hearings were held on the Arkansas Natural Gas Corporation, Public Service Co. of Colorado, Lakeside Construction Co., and the Cities Service Securities Co., which is the corporation used to market securities issued by the Cities Service group. The report on the Cities Service Securities Co. shows large expenses in marketing the securities issued by the operating companies and others. These expenses are largely caused by "sustaining the market" for the securities through purchases of its own stock on the curb exchange in New York. In the forthcoming fiscal year, reports will be introduced into the record on the Cities Service Co. itself and several of its operating public-utility companies.

THE UNITED CORPORATION

The United Corporation was organized under the laws of the State of Delaware, January 7, 1929, by J. P. Morgan & Co., Drexel & Co., and Bonbright & Co., Inc. This corporation is the largest of a new type of corporation superimposed on the electric and gas operating and holding companies and is called an "investment company." A majority of the voting stocks of the subsidiary holding or operating companies is not held by these investment companies, but the control of the companies in which they invest may be, nevertheless, practically secured. The United Corporation as of December 31, 1931, had relatively large investments in the United Gas Improvement Co., Columbia Gas & Electric Corporation, Commonwealth & Southern Corporation, Niagara Hudson Power Corporation, and the Public Service Corporation of New Jersey. It had important investments also in American Water Works & Electric Co., Consolidated Gas, Electric Light & Power Co. of Baltimore, Consolidated Gas Co. of New York, and Electric Bond & Share Co.

Recently the Commission introduced into the public record a report showing the securities turned over to the United Corporation at its organization. The report shows the cost of these securities to J. P. Morgan & Co., Drexel & Co., and Bonbright Co., Inc., to have been $69,642,122, and they were set up on the books of the United Corporation at $122,840,825, which was about $18,837,207 less than their market value at the current quotations. The securities issued by the United Corporation, which the organizers received for those turned over, had an average market value on April 30, 1929, of $195,975,255, exclusive of the value of the option warrants for the purchase of additional common stock, also delivered to the organizers.

Besides the securities put into the United Corporation, J. P. Morgan & Co. and Drexel & Co. paid in $10,000,000 in cash and Bonbright Electric Corporation paid in $10,000,000 in cash. For this $20,000,000 paid in, there were issued to them 8,000 shares of common stock and 2,000,000 option warrants.

For the groups of companies in which the United Corporation have interest, directly or indirectly, a voting-stock control of 20 percent or more, the total production of electric energy in 1930 was 22.5 percent of the central-station production of the entire country. For the other company groups, namely, those in which voting-stock interest was less than 11 percent, the total production of electric energy was 18.6 percent of that for the entire country. This constitutes for the two groups combined a total of 41.1 percent of the central-station production for the entire country. A similar comparison may be made for gas, both natural and manufactured, based on the sales of gas to public-utility consumers. For the groups of companies in which the United Corporation interests have, directly or indirectly, a voting-stock control of 20 percent or more, the total

sales of gas to public-utility consumers in 1930 was 21.68 percent of the estimated total for the entire country. For the other company groups, that is, those in which voting-stock interest was less than 11 percent, in each case, the total sales to public-utility consumers were 12.44 percent of that estimated for the country as a whole; a total of 34.12 percent of the estimated sales for the United States.

ELECTRIC BOND & SHARE CO.

The investigation into the affairs of Electric Bond & Share Co., particularly as to the exact costs and profits as a result of its managerial service and supervisory contracts, is nearing completion. The decision of the United States District Court for the Southern District of New York in the suit of the Federal Trade Commission against the Electric Bond & Share Co. et al. (1 Fed. Supp. 247), which decision was handed down August 19, 1932, directed the individual respondents to answer all questions relating to the cost to Electric Bond & Share Co. of such services as it renders the operating companies in return for the payment of a fee based upon their gross earnings, etc. An agreement was reached between the Commission and the Electric Bond & Share Co. whereby Commission examiners examined the expense ledgers and other records of the Electric Bond & Share Co., which had been denied them at the time of the first examination of this company. A report is now being prepared on the results of this investigation.

INTERSTATE TRANSMISSION OF ELECTRIC ENERGY AND GAS

Data gathered in connection with electric energy transmitted across State lines by electric utility operating companies were compiled for the years 1929 and 1930 according to holding-company group ownership and introduced into the record in report form when hearings on such companies were held.

These reports show in detail the quantities of electric energy generated, disposed of, and transmitted across State boundaries by each operating-company group. During the fiscal year such data were presented for the Pennsylvania Electric Corporation, Columbia Gas & Electric Corporation, New England Gas & Electric Corporation, Pennsylvania Electric Co., United Gas Improvement Co., Central Public Service Co., and the Utilities Power & Light Co. Transmission lines of the operating companies of these groups extend into more than 30 States and the Dominion of Canada.

Reports were also introduced into the record covering gas operations with respect to production, sales, and quantities moved in interstate commerce by the following company groups for the year 1930: Columbia Gas & Electric Corporation, North American Power & Light Co., United Gas Improvement Co., and the Central Public Service Corporation.

REMAINING WORK OF THE INVESTIGATION

It is expected that the investigation will be concluded during the fiscal year 1933–34. Work has been started to collate the material gathered together in the reports for the preparation of the final report on the results of this investigation. The inquiry into the financial and economic problems in the industry will cover most of the large holding-company groups and a few of the smaller ones. Most of the principal holding, management, and servicing companies in each of these groups will be covered together with a sampling of the operating companies. The total of the material collected will, it is believed, represent a good sample of the conditions among such companies in the electric utility field, which, in the aggregate, represented in 1929 more than 45 percent of the total output for the United States, and more than 80 percent of the electric energy sold by privately owned electric utilities doing an interstate or international business. The gas utility field, which of necessity will have been covered less comprehensively than the power field, is becoming a subject of increasing interest on account of recent developments in natural gas production and the great extensions of interstate pipe lines for gas.

By the terms of the Senate resolution the Commission, in addition to learning certain facts, is required to report to the Senate the value or deteriment to the public of public utility holding companies and particularly to suggest what legislation, if any, should be enacted by Congress to correct any abuses that may exist in the organization or operation of such holding companies. The Commission is further directed to report whether any of the practices described in the resolution tend to create a monopoly or constitute violations of the Federal antitrust laws.

CHAIN-STORE INQUIRY

TWENTY-SIX REPORTS ARE SENT TO CONGRESS

Work on the chain-store inquiry during the fiscal year comprised the writing or completing of 26 reports on the different phases of chain-store operations. Seven reports had previously been sent to Congress, as follows: [1]

Scope of the Chain-Store Inquiry.
Growth and Development of Chain-Stores.
Cooperative Grocery Chains.
Cooperative Drug and Hardware Chains.

[1] These reports were briefly described in the preceding annual reports of the Federal Trade Commission; that on the Cooperative Grocery Chains in the report for the year ending June 30, 1931; the remaining six in the report for the year ending June 30, 1932.

Sources of Chain-Store Merchandise.
Wholesale Business of Retail Chains.
Chain-Store Leaders and Loss Leaders.

The 26 reports completed during the fiscal year 1932–33 are:

Chain-Store Manufacturing.
Chain-Store Private Brands.
Chain-Store Advertising.
Chain-Store Wages.
The Chain-Store in the Small Towns.
State Distribution of Chain Stores, 1913–28.
Sizes of Stores of Retail Chains.
Chain-Store Price Policies.
Quality of Canned Vegetables and Fruits (Under Brands of Manufacturers, Chains, and Other Distributors).
Short Weighing and Over Weighing in Chain and Independent Grocery Stores.
Service Features in Chain Stores.
Prices and Margins of Chain and Independent Distributors, Washington, Grocery.
Prices and Margins of Chain and Independent Distributors, Memphis, Grocery.
Prices and Margins of Chain and Independent Distributors, Detroit, Grocery.
Prices and Margins of Chain and Independent Distributors, Cincinnati, Grocery.
Prices and Margins of Chain and Independent Distributors, Detroit, Drug.
Prices and Margins of Chain and Independent Distributors, Washington, Drug.
Prices and Margins of Chain and Independent Distributors, Cincinnati, Drug.
Prices and Margins of Chain and Independent Distributors, Memphis, Drug.
Special Discounts and Allowances to Chain and Independent Distributors, Tobacco.
Special Discounts and Allowances to Chain and Independent Distributors, Grocery.
Special Discounts and Allowances to Chain and Independent Distributors, Drug.
Gross Profit and Average Sales per Store of Retail Chains.
Sales, Costs, and Profits of Retail Chains.
Invested Capital and Rates of Return of Retail Chains.
Miscellaneous Financial Results of Retail Chains.

REPORTS TO CONGRESS ARE BRIEFLY DESCRIBED

Brief descriptions of the salient features of the reports completed during the fiscal year, grouped to some extent by subject matter, are given below.

CHAIN-STORE MANUFACTURING

The report on chain-store manufacturing shows to what extent the manufacture of commodities and the distribution of them through retail stores have been combined by chain-store organizations in various lines of business. Of 1,068 chain-store companies in 26 kinds of business which furnished information on the question of

manufacturing, 162 reported that they manufactured part of the goods sold by them in the year 1930. While only 9 percent of the chains operating from 2 to 5 stores are engaged in manufacturing, 65 percent of those operating more than 500 stores are manufacturing chains.

The retail sales in 1930 of goods manufactured by these chains amounted to approximately $350,000,000 which is equivalent to 14.1 percent of the total retail sales of the 162 manufacturing chains and to 8.1 percent of the total sales of 1,068 chains reporting. Seventy-three of the 162 chains manufacture from 50 to 100 percent of the goods sold to their stores.

Upwards of 70 percent of the sales of manufacturing chains is represented by goods of their own manufacture in seven kinds of business (confectionery, men's shoes, men's ready-to-wear, women's shoes, hats and caps, men's and women's shoes, and women's accessories), and in no other line of business do manufacturing chains produce more than one third of the merchandise they sell. More than 50 percent of the total sales of all reporting chains is produced by the manufacturing chains in three lines of business (confectionery, men's shoes, men's ready-to-wear), and in no other kind of business does this proportion exceed 30 percent. It appears that those lines of chain-store business such as foods, drugs, and variety which handle wide assortments, as contrasted with specialized lines of merchandise have experienced the greatest expansion in number of stores operated and have experienced, relative to their volume of sales, the least development of chain-store manufacturing.

Approximately 80 percent of the manufacturing chains report that they own private brands, while only 20 percent of the non-manufacturing chains own such brands. Of 985 chains which report as to manufacturing and the use of private brands, 704 chains neither manufacture nor use such brands.

CHAIN-STORE PRIVATE BRANDS

The report on private brands shows that about one fourth of the reporting chains owned private brands but these chains accounted for about three fourths of the stores and sales.

Private brands appear to be sold to at least to some extent in about 97 percent of the chain grocery and meat stores, in from 84 to 90 percent of the chain grocery and department stores, in about 86 percent of the confectionery stores, in from 63 to 81 percent of the chain dry goods and apparel stores, and in from 62 to 75 percent of the dollar-limit variety stores.

Considered from the standpoint of the dollar volume, the great bulk of the private brand sales of brand owning chains, at least in recent years, has been made by chains in a limited number of lines of

business. Excluding A. & P. and Kroger, nearly four fifths of the total private brand sales reported by 274 chains in 1930 were made in five of the 26 kinds of chains, namely, dry goods and apparel, department store, men's and women's shoes, grocery, and grocery and meat. If A. & P. and Kroger are included, the private brand sales of these five kinds of business represent nearly six sevenths of the total. Approximately one third of the private brand sales of all private brand chains reporting in 1930 was made by A. & P. and Kroger, and these two chains together with The J. C. Penny Co., accounted for more than one half of the total private brand sales reported in that year.

Based on the proportion of private brand sales to total sales of private brand owning chains, the private brand business is apparently most important in confectionery and men's shoe chains and least important in hardware, unlimited price variety, variety ($5 limit), and millinery chains.

The trend of private brand business appears to be definitely upward from 1925 to 1930 in grocery and meat (excluding A. & P. and Kroger), drug, women's shoes, men's and women's shoes, and men's furnishing chains. It was also clearly upward from 1928 to 1930 in grocery and department store chains. The trend appears to be clearly downward in dollar-limit variety chains and in the two hat and cap and one musical instrument chains reporting. The trend in tobacco chains although not so definite apparently is downward.

A detailed analysis of the actual mark-up taken on 249 items sold under private brands and 294 items sold under competing standard brands by 59 chains handling grocery products does not support the statements of policy made by the chains, most of which claim to mark up their private brands either the same or lower than competing standard brands. Only 14.8 percent of the private brands reported, as contrasted to 32.7 percent of the standard brands were being sold on March 30, 1929, at a gross profit of less than 16.1 percent, the average cost of doing business for all chains of these kinds. The gross profit was 20 percent or more on 73.9 percent of the private brands as compared with only 48.2 percent of the standard brands. Only 46.2 percent of the private brands were sold at a gross margin of less than 25 percent as compared with 71.5 percent of the standard brands. At the other extreme, a gross profit of 40 percent or more was made on 10 percent of the private brands but on only 1.3 percent of the standard brands.

An analysis of quotations received from 25 drug chains on private and competing standard brands of drug and miscellaneous products and toilet articles disclosed that only about one half of one percent of the private brands, as contrasted to 54.3 percent of the standard brands, was being sold on March 30, 1929 at gross margin of less than 33.3 percent, the average cost of doing business in 1929 in all reporting

drug chains. The gross profit was 65 percent or more on 42.5 percent of the items bearing private brands, while the highest gross profit reported for any standard brand was 60.9 percent.

Although the mark-up on private brands was equal to or higher than that on competing standard brands, according to a majority of the reporting chains, nevertheless private brands generally were priced lower than competing standard brands chiefly because of lower cost. About one third of the chains reporting on their pricing policies priced their private brands lower than competing standard brands but this group operated nearly three fourths of the total stores. Half of the chains sold both private brands and standard brands at the same price. About one sixth of the chains, operating less than 2 percent of the stores, priced their private brands higher than competing standard brands.

In addition to the general statements on pricing policies, reports were received on the actual selling prices, March 30, 1929, of private brands and competing standard brands which had the highest mark-up. If a hypothetical customer on this date had purchased all 424 commodities (212 under private brands and 212 under standard brands) from the grocery and grocery and meat chains reporting, his private brands would have cost him $12.99, or 12.3 percent, less than the standard brands.

A comparison between the selling prices of private brands and competing standard brands which had the lowest mark-up indicated that if a customer on March 30, 1929, had purchased 59 items under private brands and 59 bearing standard brands from the chains furnishing price information, the private brands would have been lower by 8.5 percent than the competing standard brands.

Similar comparisons for the drug chains indicated private brands of drug and miscellaneous products were lower than competing standard brands by 15.7 percent and for toilet preparations were lower by 26.5 percent. In a comparison between private brands and competing standard brands having the lowest mark-up, the private brands of drug and miscellaneous articles were lower by 6.3 percent and those of toilet articles were lower by 26.8 percent.

CHAIN-STORE ADVERTISING

Fifteen hundred and six chains reported their total advertising expenditures for 1928. These chains operated 59,959 stores and spent more than $65,600,000 for advertising, an average of $45,552 per chain and $1,094 per store. The sales of these 1,506 chains exceeded $4,322,000,000 and the ratio of advertising expense to sales was 1.52 percent. This ratio was greater than that of any of the 3 earlier years reported on, there being a steady increase in this respect, with ratios of 1.15 percent in 1919, 1.30 percent in 1922, 1.42 percent in 1925, and 1.52 percent in 1928, as stated above.

The ratio of advertising expense to sales varied greatly among different kinds of chains. In 1928 the range was from 0.29 percent for dollar-limit variety chains to 6.77 percent for furniture chains. Low ratios were also reported by tobacco, meat, grocery, grocery and meat, and confectionery chains. High ratios were reported by men's and women's ready-to-wear, musical instruments and women's ready-to-wear chains.

Slightly more than 86 percent of 1,030 chains reporting their detailed advertising expenditures for 1928 used newspaper advertising and these chains operated 96.3 percent of the stores. Pamphlet and dodger advertising was reported by 24.9 percent of these chains, operating 32.1 percent of the stores, and window and counter display advertising by 23.8 percent of the companies which operated 5.0 percent of the stores. Billboard and outdoor advertising was used by 7.3 percent of the chains operating only 2.6 percent of the stores. Free goods as a form of advertising, was used by 4.3 percent of the reporting chains and these operated 4.0 percent of the stores. Street car and bus advertising was reported by only 1.7 percent of the companies, but these operated 13.4 percent of the operated stores.

Chains are large users of loss leaders, one of the purposes of their use being to attract trade. The use of "loss leaders charged as advertising," however, was reported by only 2.4 percent of the 1,030 companies reporting their detailed advertising expenditures, and these few chains operated only 0.4 percent of the total stores reported. Apparently the chains using loss leaders have generally failed to charge the cost to advertising.

It would seem that most independent dealers cannot compete successfully with the chains in newspaper advertising. The larger individual stores, doubtless, are in a better position with respect to such advertising than the small dealers and this is particularly true of some lines of business such as department stores, clothing and apparel lines and furniture stores.

The cooperative chains are of particular interest in connection with advertising, especially those in the grocery field. As is shown in the commission's report on Cooperative Grocery Chains, there were more than 300 cooperative grocery chains in the United States in 1929 and many of these groups engaged in extensive advertising programs. The stores of members of the cooperatives frequently are painted a uniform color and almost always have uniform signs which give a definite tie-up to the advertising program. Newspaper advertisements featuring specials are run at frequent and regular intervals, handbills and dodgers, and store and window cards are supplied, advice given on window and counter displays, billboards, street car and bus cards are used, radio programs broadcast and a few have run advertisements in national magazines.

CHAIN-STORE WAGES

The report on chain-store wages shows that 1,562 chains operating 63,657 stores and doing a business of about $4,600,000,000 for 1928 reported $20.60 as the average weekly wage of 292,172 store employees for the week ending March 30, 1929. As of the week ending January 10, 1931, the average weekly wage of 279,746 store people employed by 1,219 chains with 1930 sales of about $5,250,000,000 was $20.48. The aggregate average weekly wage for both 1929 and 1931 is influenced greatly by dollar-limit variety chains, grocery and meat chains, and chains of department stores, which collectively employ well over fifty percent of the total store employees reported and pay over fifty percent of the total wages for the 26 kinds of chains.

The average weekly wages reported for store managers as of the weeks ending March 30, 1929, and January 10, 1931, were $46.91 and $44.57 respectively. Three kinds of chains, grocery, grocery and meat, and dollar-limit variety, account for about 75 percent of the managers and 75 percent of the total annual compensation in both years.

For the year 1929, only 8 of the 26 kinds of chains report average weekly wages for store employees below the general average of $20.60, but, among the eight, are the grocery ($19.73), grocery and meat ($19.28) and the dollar-limit variety ($16.13) chains. In contrast with the foregoing, seven kinds of chains, including meat, men's ready-to-wear, women's shoes, and furniture, reported for 1929 average weekly wages per store employee of $30 or more.

Comparable data on chain store and "independent" dealer wages for full-time store selling employees are available for the following eight kinds of business: Grocery, grocery and meat, drug, tobacco, ready-to-wear, shoes, hardware, and combined dry goods, dry goods and apparel, and general merchandise. The weighted average weekly wage of 3,933 independent store selling employees in these eight kinds of business for the week ending January 10, 1931, was $28.48, as compared with $21.61 for 107,035 chain-store selling employees. A simple average of the eight lines of business shows a narrower spread between the two figures ($28.10 for independents and $23.82 for chains respectively) but leaves the same distinct conclusion; namely, that for the period studied, the independents paid their store employees more than did the chains.

Independent store wages in each of the eight kinds of business furnishing comparable data were higher than those reported for chains, the difference varying from $6.92 for grocery and meat to only 65 cents for hardware.

For both of the weeks ending March 30, 1929, and January 10, 1931, there is a tendency for smaller sized chains to pay higher average weekly wages to store employees than do the larger ones in six kinds

of business, grocery and meat, tobacco, men's and women's ready-to-wear, men's shoes, women's shoes, and furniture chains. The same tendency also appears in store managers' wages in tobacco, women's ready-to-wear, men's furnishings, department store, furniture, and hardware chains. There is, on the other hand, apparently some tendency for the larger chains to pay higher average weekly wages to several types of employees than do the smaller chains; for employees in the dollar-limit variety, for managers in the dollar-limit variety and millinery, and in supervisors' wages in drug, dollar-limit variety, and millinery businesses.

THE CHAIN STORE IN THE SMALL TOWNS

The report on the chain store in the small town is based upon the study of conditions in 30 small towns, mostly within the range of 2,000 to 5,000 population as situated in the major geographical divisions of the country except the Mountain and Pacific divisions.

Eleven hundred and eleven retail stores in 25 lines of business were recorded in the 30 towns during the latter half of 1931. Approximately 20 percent of the total stores in 25 lines of business were operated by chains. There was an average of seven chain stores per town and not quite 30 independent stores per town. Between 1926 and 1931 a net increase of 103 in the number of chain stores was accomplished by a net decrease of 70 in the number of independents. This decrease in independent stores was the net result of a decrease of 72 stores in lines of business in which the chain stores also engaged and an increase of 2 stores in lines not engaged in by chain stores. Of the 115 chain stores in business on December 31, 1926, 91, or almost 80 percent, were still in business in 1931. Of the 910 independent stores in business at the close of 1926, there were 609, or approximately 67 percent, still in business at the time of report in 1931.

In 9 towns having the greatest increase in number of chain stores there was a net decrease of 48 in the number of independent stores. In 10 towns with medium chain increase, the independents decreased by 17, and in 11 towns with least chain-store increase the independent decrease amounted to only 5 stores.

The five leading kinds of chain-store business in the 30 towns, as measured by numbers of stores operated, are grocery, grocery and meat, variety, dry goods and apparel, and department stores, in which lines the proportion of chains to total stores varies between 24 and 68 percent. The 3 food lines account for 92 of the 218 chain stores.

The earliest report of the appearance of chain stores in the 30 towns was that of a 2-store drug chain in 1904, followed by a variety chain store in 1906 and a dry goods and apparel chain store in 1908. The food stores entered in 1909, but did not begin a steady growth until 1915. In only seven towns were grocery or grocery and meat

chain stores opened earlier than other kinds of chains, so far as these reports show.

It is estimated that the total sales for the 218 chain stores doing business in these towns in 1931 were $12,156,100, or approximately $400,000 per town. Almost half of the total stores and sales were in the food group.

Comparison of the average chain and independent rent together with the sales data shows that the chains can pay distinctly higher rents than independents without incurring a disproportionate expense burden on account of their higher average sales per store. This means that they have generally superior locations, and several instances were reported of the chain stores displacing independent tenants because of the rent paid.

Ninety-three of one hundred and sixty-two reporting chain stores were represented in local civic organizations, either through company membership, manager membership, or both. Of 153 chain stores replying as to contributions to local civic and charitable activities, 126 stated that contributions had been made by the company and 27 said none were made. For a period of 12 months, they contributed a total of $9,737.37. This amounts to approximately $77 per store contributing and to something less than $65 per store reporting.

For all kinds of chain stores reporting, the average number of hours of business per week is just under 70. Average overtime per manager working overtime is 6.3 hours per week, but including those not working overtime the average is 4.8 hours per week. At the time of the report in 1931, a total of 204 selling employees in independent stores received an average weekly wage of $18. 60, while 198 chain-store selling employees received an average wage of $16.89 per week.

STATE DISTRIBUTION OF CHAIN STORES, 1913–1928

The report on the State distribution of chain stores shows not only the distribution of chain stores but also the general trend of chain-store growth in the various States at 3-year intervals during the period 1913–1928.

A marked increase occurred in the number of stores reported for each year of the series over the preceding year in every geographic division of the country. Two thirds of all chain stores reported in each year are concentrated in the three contiguous and populous divisions in the Northeast-New England, Middle Atlantic, and East North Central, though since 1919 the aggregate proportion of stores reported in that section is gradually diminishing.

New York leads all other States in the number of both chains and stores reported for each year, notwithstanding a striking decline in the proportion of stores operated in that State since 1919, due to relatively greater growth in other States.

There are only five States in which as many as 10 percent of the total chain-store companies were operating in some year or more of the series covered: New York, Illinois, Ohio, Pennsylvania, and Massachusetts. Approximately 50 percent of the total stores reported for each year of the series are concentrated in those five States,[1] with an additional 25 percent approximately in the five States next in order: New Jersey, California, Michigan, Indiana, and Missouri.

SIZES OF STORES OF RETAIL CHAINS

The importance of this study lies primarily in the consideration of the retail advantages of large and small chains in the distribution of commodities. If it be true, as has been suggested, that the larger store units of retail chains, as measured by volume of sales, are able to sell and distribute goods at a lower cost than the smaller units of the same or other chains, the proportions of such units operated have an important bearing on proposals for regulation and attempts to check the growth of chains by taxation or otherwise.

Based on the figures for the latest year for which the information is available, the smaller chains show larger proportions of large stores than do the larger chains in grocery, grocery and meat, men's and women's ready-to-wear, men's and women's shoes, and men's shoes.

On the other hand, in dollar-limit variety, drug, and musical instruments, the larger chains appear to operate greater proportions of stores with large sales than do the smaller chains.

CHAIN-STORE PRICE POLICIES

Because chain stores are presumed to represent the application of large-scale methods of operation to the business of retailing, inquiry is directed in the report on chain-store price policies to the question of how far the chains have reduced the important functions of marking up and pricing their merchandise to a systematic basis. Inquiry also is made into the degree of centralized control over prices exercised by the headquarters of chain organizations, the extent of and reasons for variation in prices between the stores of a chain, and into the competitive phases of chain-store price policy.

When asked to state whether it is the policy to price their merchandise according to some rule or standards, or whether the pricing of goods is left to the discretion of certain officials, 511 of 991 chains replying state either that no rule is followed or that it is left to the discretion of the pricing officials.

Pricing at a set average mark-up over cost is the rule most frequently reported by the chains. Next in order is the rule that prices are set by competition, which in turn is followed by the policy of selling at fixed retail prices determined in advance of the purchase of

[1] In different order, however: New York, Pennsylvania, Ohio, Illinois, and Massachusetts.

the goods, as exemplified in 5- and 10-cent-store chains. Sixty-two percent of the reporting chains have no rule against pricing goods below net purchase cost, and 74 percent of them have no rule against pricing goods below net purchase cost plus cost of doing business.

About two thirds of the 1,500 reporting chains state that they retain exclusive control of selling prices and also of mark-up in central headquarters and about one seventh of the chains give exclusive control of selling prices and of mark-up to their store managers. Interviews with a number of chain officials show that complete retention of price control in the headquarters organization is rather the exception than the rule among the chains interviewed.

Although 70 percent of the 1,673 reporting chains claim that their selling prices are identical in all their stores the great majority of chain stores and sales reported are on a nonuniform basis. The 502 chains which report the selling prices of their stores as not being identical account for about two thirds of all stores and seven tenths of all sales reported. Field data gathered by the commission show that 10.4 percent of the price quotations obtained from the stores of food chains in three large cities varied from the quotations furnished by chain headquarters.

When district officials and store managers are given more or less control of selling prices, variability is bound to occur. Differences in costs of goods and differences in the cost of transportation frequently cause nonuniformity of chain-store prices. But competition is the most frequently reported single reason for price variation.

Some of the chains interviewed with regard to price policy expressed a broad and unqualified purpose of meeting all competition. Other chains state definitely that they do not meet certain types of competition. The most important protection from the effects of direct price competition, as revealed by statements of chains interviewed, is the development of their own private brands.

Large chains operating over a wide territory have one inherent advantage over smaller chains or independent retailers with respect to price competition. The source of this advantage lies in the fact that such an organization is able to average the profit results obtained from its stores in the numerous localities where it operates. This advantage of chains over single-store independent competitors is most aggressively pursued on those occasions when chains cut their prices locally below the prices of their competitors in that locality, while maintaining prices in their other stores. Discussion of this question by officials of leading chain organizations indicates that it is a quite usual practice among them to cut prices locally not only to meet, but to go below, the prices of their competitors.

QUALITY OF CANNED VEGETABLES AND FRUITS

(Under brands of manufacturers, chains, and other distributors)

In connection with its study in 5 cities of the comparative buying and selling prices of chain and independent grocery stores, the Commission, in 3 of the 5 cities, Des Moines, Memphis, and Detroit, purchased samples of certain brands of canned fruits and canned vegetables for grading.

In all, 396 cans of vegetables were graded. Of these, 85 were canned spinach and pumpkin which do not have the same standards as other vegetables. The results of the grading showed that excluding these two kinds of vegetables, the brands of the chains were only slightly below those of nationally advertising manufacturers in the proportion of their cans grading "fancy", "extra standard", and "standard", respectively. They make a slightly better showing than nonnationally advertising manufacturers in the "fancy" grade and show a materially higher proportion for "extra standard." Compared with wholesalers, the chains show a distinctly higher proportion in "fancy" and a somewhat lower proportion in "extra standard." Chains lead the cooperatives slightly in proportions of their brands of canned vegetables grading "fancy", but for the "extra standard" grade the brands of the cooperatives had a much higher ratio.

A total of 621 cans of fruit was graded. The proportion of the chain brands of fruits which graded "fancy" was slightly higher than the average; although the proportions for brands of both wholesalers and nationally advertising manufacturers. In the proportion of brands grading "choice" the chains substantially exceeded the figures shown by any other group. None of the chain brands of canned fruits graded "seconds."

As with canned vegetables there were marked differences in the grades of manufacturers who advertise nationally and those who do not, the former being the higher in quality. There was also the same general close correspondence in the grades of the chains and the nationally advertising manufacturers. Furthermore, the comparisons of the grade scores indicate that the chains compare favorably with these and other distributors in the quality of their private brands of canned vegetables and fruits.

SHORT WEIGHING AND OVER WEIGHING IN CHAIN AND INDEPENDENT GROCERY STORES

The report on short weighing and over weighing in chain and independent grocery stores was undertaken to determine the extent to which chain stores short-weigh commodities sold in bulk and also to determine whether this practice occurs more often in chain than in independent stores.

In carrying out this study five bulk articles were purchased for weighing from both kinds of stores without disclosing by whom and for what purpose such purchases were being made. The commodities purchased were navy beans, dried prunes, lima beans, light-weight sweetened crackers, and sugar. The quantities of the commodities bought varied from one half pound to 4 pounds.

The purchases were made in four selected cities each having a population of more than 100,000, situated in different sections of the country. In each of these cities were one or more of the five largest chain-store systems, also one or more local chains as well as one or more cooperative chains with their membership of independent grocers. Shopping was done in practically all stores in the four cities, hence all types of stores in all types of neighborhoods are represented.

In the four cities, shopping for the five bulk commodities was done in a total of 1,691 stores.

Of the total number of stores visited, 702, or 41.5 percent, belonged to 11 different grocery or grocery-and-meat chains; 320, or 18.9 percent, were independent stores affiliated will 11 cooperative chains; and 669, or 39.6 percent, were independent stores without cooperative affiliations.

On all purchases from chains in the four cities, 50.3 percent of the items were short in weight. On all purchases from independent and cooperative retailers 47.8 percent were short weight. Overweights were obtained on only 34.1 percent of the total purchases from chains as compared with 43.8 percent of the purchases from independents and cooperative chains combined. Exact weights, however, were given on 15.6 percent of the items purchased from chains but on only 8.4 percent of those bought from cooperatives and independents combined.

The short weights (not including overweights) on total purchases from chains (0.987 of 1 percent) were substantially below those of independents and cooperative chains combined (1.265 percent).

However, the total net shortage (the difference between total quantities short weight and over weight) on all items purchased from chain stores was slightly over three tenths of 1 percent (0.321 of 1 percent) of the total quantity bought, as compared with a net overage for independents of 0.143 of 1 percent. The overages and shortages from cooperatives exactly balanced. Combining the cooperative and independent dealer purchases the result is a net overage of 0.096 of 1 percent.

While the size of the shortage for chains may seem insignificant to many, it would amount to 3.41 percent on the investment in these bulk commodities, figures on the basis of the average stock turn of grocery-and-meat chains of 10.61 times per annum.

SERVICE FEATURES IN CHAIN STORES

Nearly one half of the 1,700 reporting chains, operating more than 8,000 stores and selling more than one and one quarter billions of dollars of merchandise in 1928, employed credit to some extent. For all kinds combined, it was estimated that cash sales were 90 percent of the total sales, credit sales, 10 percent of total sales.

While almost half of the chains rendered some delivery service, such chains operated less than one fifth of the stores and accounted for less than one third of the total sales of all chains reporting. On 88.8 percent of the total net sales of all reporting chains, it is estimated that no free delivery service was given to customers, while the remainder, or 11.2 percent, was delivered free.

A little more than one half (51.2 percent) of the reporting chains stated that none of their stores accepted telephone orders in 1928. These chains account for slightly less than one half of the stores (49.4 percent) and sales (47.3 percent) reported by the 1,499 chains. A somewhat smaller proportion (41.4 percent) of all the chains reporting (stores 12.1 percent and sales 25.4 percent) stated that all stores took telephone orders while 111 chains, or 7.4 percent of all reporting chains, took telephone orders in some of their stores. This latter group of companies operated almost 40 percent of the total stores and accounted for about 27 percent of the total volume of business.

PRICES AND MARGINS OF CHAIN AND INDEPENDENT DISTRIBUTORS

A series of eight reports was completed presenting the results of a study of prices and margins of chain and independent distributors in the grocery and drug business of Washington, Cincinnati, Memphis, and Detroit. Material for this study was collected first in Washington. The first report in this series deals with the results of the study for grocery distributors in that city. It also serves as an introduction to the series of reports, presenting details regarding the character and sources, and methods of collecting and compiling the statistics for all the above-mentioned cities.

Statistics of retail selling prices were secured from a large number of independent grocery and drug stores in each of the cities mentioned. The prices authorized to be charged in the stores of the leading grocery and drug chains were obtained through the headquarters of each chain in each of these cities, and in Memphis and Detroit prices were also collected directly from the stores of these chains.

In order to compute the gross margins of chain and independent distributors, it was necessary also to obtain their purchase costs on the items for which retail selling prices were obtained. These were procured from the leading grocery and drug chains and wholesalers, and, in the case of the grocery studies, from the cooperative organi-

zations which had adequate warehouse records, and from manufactures or distributors who deliver merchandise directly to the stores of the chains and independents. The figures for special discounts, rebates, and allowances made by some manufacturers to some dealers, both in the grocery and drug trades, were obtained from the manufacturers.

The statistics of selling prices and costs were weighted in such a manner as to give effect, so far as practicable, to the relative importance of the several items covered; that is, to the relative volume of the items handled by the chains and independent dealers. The statistics of the quantities used as weights were obtained from the same sources as the cost figures.

In the principal statistical analysis in each of the eight reports the average prices, costs, and gross margins of the independent distributors are compared with the averages for the leading chains. In each of these reports summary tables are presented which show the average prices, costs, and margins for a large number of items combined and for the different constituent commodity groups. The figures are shown on an unweighted basis, and then as weighted both by chain volume and by the volume of independent distributors. The geometric average of these two weighted figures is also shown. In the main discussion of the statistics in each of the reports the figures for the leading chains were combined in averages and compared with the average figures for independent distributors. The following is a brief presentation of the more important facts brought out in the principal analyses of the statistics in the several reports. It should be pointed out in this connection that the statistics for different cities do not relate to the same period, and that the relationships between the figures for independent distributors and the chains might be somewhat different if the data for all the cities were collected for the same period.

In the comparisons which follow the ratios of the selling prices and costs of the independent distributors to those of the chains are on the basis of the geometric averages of the results obtained by weighting the figures by chain volume and by independent distributor volume. The cost figures used are the costs arrived at after the deduction of special discounts and allowances, and the gross margins were computed on the basis of these costs. The gross margins are given in terms of percentages of sales, and the figures for the independent distributors were weighted by the volume of that class of distributors, while the figures for the chains were weighted by their volume. The gross margin of the chain is the spread between the cost to the chain and the retail selling price of the chain. The gross margin of the independent distributors is the spread between the cost to the wholesaler and the selling price of the independent retail store.

For the grocery business in Washington, the results of the study for 1929 showed that for the period covered the selling prices of independent distributors were on the average 6.4 percent higher than the average selling prices of the two principal chains, while their costs were 1.72 percent higher. The average gross margin of the independent distributors was 20.88 percent, as compared with 18.99 percent for the chains.

The average selling prices of independent grocery distributors in Cincinnati in 1929 were 8.84 percent higher than the average for the two leading chains and 9.85 percent higher than those for two smaller chains. The average costs for the independents were only about one quarter of 1 percent higher than those of the large chains and about one half of 1 percent higher than those of the smaller chains. The average gross margins of the independent distributors were 25.26 percent (using independent-distributor weights) as compared with 16.97 percent for the large chains (using large-chain weights) and 17.37 percent for the smaller chains (using small-chain weights).

The comparison of the average figures for independent grocery distributors in Memphis in 1930, with the average figures for the two leading grocery chains, showed the selling prices of the former as 8.28 percent higher than those of the latter, and their costs 2.86 percent higher. The average gross margin of the independent distributors was 25.23 percent of sales and that of the chains 22.91 percent.

A comparison of the average figures for independent grocery distributors in Detroit, in 1931, with the average figures of the four leading chains, showed the selling price of the former on the average 10.47 percent higher than the average for the latter, and their costs 2.31 percent higher. The average gross margin of the independent distributors was 25.02 percent, as compared with 18.96 percent for the chains.

In each of the four reports on prices and margins of grocery distributors it was pointed out that in the comparisons of the figures for the independents with those of the chains, it should be borne in mind that the independent grocery establishments render services, such as credit and delivery to retail customers, to a greater extent than do the chain grocery establishments.

For the drug business in Washington, the study of the figures for 1929, the prices, costs, and gross margins of independent distributors were compared with those for the three principal chains combined. The comparison showed the selling prices of the independents on the average 22.72 percent higher than those of the chains, and their average costs 3.27 percent higher. The average gross margin of independent drug distributors was shown to be 37.66 percent and the corresponding figure for the chains 22.60 percent.

The study of the Cincinnati drug figures for 1929 showed the average selling prices of independent drug distributors as 20.35 percent higher than the average for the two principal chains, and their costs 1.81 percent higher. The average gross margin of the former was 36.76 percent and that of the latter 23.99 percent.

The study of the figures for the drug business of Memphis in 1930 indicated an average selling price for the independents 20.69 percent higher than the average for the two principal chains, and an average cost 1.38 percent higher. The average gross margin was 41.18 percent for the independent distributors, as compared with 28.77 percent for the chains.

The report on the study of the drug business of Detroit in 1931 showed the average selling price of independent distributors as 17.48 percent higher than that of the three leading chains, with average costs 3.88 percent higher. The average gross margin of the independent distributors was 39.40 percent and that of the chains 30.72 percent.

In all the comparisons given above the price figures used for the chains were the prices which the headquarters of each chain authorized to be charged in its stores in the particular city. It was found by tests made for each city (except Cincinnati), in which these authorized prices were compared with the prices secured from the stores, that the average deviation of the latter from the former was slight. It was considered, therefore, that the use of the authorized chain prices was justified. There was one exception, however, in the case of the Detroit drug chains. In that case it was found that the average deviation of store prices from the authorized prices was considerable for 2 of the 3 chains. Therefore, in the report on prices and margins of Detroit drug distributors supplementary tables were presented giving a comparison of independent prices with the prices obtained from the stores of the chains. On the basis of these figures the average prices of the independent drug distributors in Detroit were shown to be 14.53 percent higher than the average prices of the chains, and the average gross margin of the chains was 32.52 percent, as compared with 30.72 percent on the basis of the authorized chain prices.

The reports on prices and margins of grocery distributors in Washington and Cincinnati also presented the results of supplementary studies made in the effort to throw light on the question whether or not differences in prices might be ascribed in part to the fact that some stores rendered services to their customers, while others did not. The services taken into consideration were credit, taking orders on the telephone, and free delivery of goods; and the independent and cooperative stores were divided into three groups as follows: (1) Those rendering no service, (2) those giving service on 1 to 49 per-

cent of sales, and (3) those giving service on 50 to 100 percent of sales. The chain stores, which were understood to be cash-and-carry stores, were not taken into consideration.

In the Washington study there appeared to be some correlation between the prices of the various groups and the extent of services rendered, but the correlation was not complete. In the Cincinnati study it was found that for the independent stores and for each of two cooperative groups (with one exception, where the totals were practically the same) the prices for the no-service group were somewhat lower than those for the group of stores reporting service on 1 to 49 percent of sales, while without exception, the prices of the group of stores reporting service on 50 to 100 percent of sales were higher than those for the group reporting service on 1 to 49 percent of sales. These figures indicate some correlation between the prices of the independent and cooperative stores and the extent of the services rendered to their customers. It was noted, however, that other factors, not sufficiently well recognized to permit their elimination, might influence the results.

SPECIAL DISCOUNTS AND ALLOWANCES IN THE TOBACCO, GROCERY AND DRUG TRADES

Three reports on special discounts and allowances of chain and independent distributors summarize the data collected by the commission on this subject in the tobacco, grocery, and drug trades. These studies were undertaken to determine the truth or falsity of the assertions frequently made that chain-store organizations hold an important advantage over independent dealers because of the large discounts and allowances obtained by them on many items, which independent competitors were not able to obtain.

These studies consist of analyses of the discounts and allowances reported by several hundred manufacturers of tobacco, grocery, and drug items, covering their total sales and total discounts and allowances to a large selected list of chain, wholesale, cooperative and other independent distributors in various parts of the country in an effort to measure the importance of special discounts and allowances in chain and independent distribution on a board quantitative basis. The data on discounts and allowances cover a wide range of tobacco, grocery, and drug products as well as miscellaneous sundries generally sold in conjunction with these articles. Reports covering these classes of articles in the tobacco trade were obtained from 134 manufacturers of tobacco products and miscellaneous related articles for the years 1929 and 1930. In the grocery trade similar reports were obtained from 457 manufacturers for the year 1929 and 464 manufacturers for the year 1930. A total of 682 manufacturers in the drug trade submitted discount and allowance data in 1929 and 688 manufacturers for the year 1930.

Reports obtained from the manufacturers of tobacco and miscellaneous allied articles covered their total sales and allowances to 47 selected chains and 63 selected tobacco wholesalers in 1929 and to the same number of chains and one less wholesaler in 1930. In the grocery trade manufacturer's reports covered total sales in each year to 62 grocery chains, 93 wholesale grocers, and 44 cooperative chains, and in the drug trade the data covered total sales in each year to 49 chains, 58 drug wholesalers, and 6 independent department stores. The various distributors for which the manufacturers reported sales were the same companies in both years. The extent of discounts and allowances given by the reporting manufacturers of these three classes of articles is indicated by the following statements from the reports:

Tobacco.—The total amount of the sales of all of these 134 manufacturers of tobacco and related miscellaneous commodities to these tobacco distributors aggregated just under 250 million in 1929 and over 285 million in 1930. The total allowances in the former year were $6,417,161 and in the latter year, $6,928,992.

Although the sales of the manufacturers to the chains aggregate only 57.05 percent of the total in 1929 and only 60.12 in 1930, the chains obtained 82.02 percent of the total allowances in 1929 and 88.36 percent in 1930. As a result the rates of allowances on total sales of all manufacturers to chains (3.69 percent in 1929 and 3.57 percent in 1930) are over three times the rate to wholesalers (1.07 percent) in the earlier year and about five times that to wholesalers in 1930 (0.71 percent).

Of the 134 manufacturers included in the study, however, only 89 in 1929 and 94 in 1930 reported allowances to any of the chains or wholesalers. The total sales made to all dealers included in this study by this group of manufacturers making allowances were $111,229,243 in 1929 and the total allowances of $6,417,162 in that year amounted to 5.77 percent of sales. In 1930 the total sales of this group of manufacturers were $179,510,415 and the allowances of $6,928,992 were at a rate of 3.86 percent of sales. In the former year, the allowances to chains by manufacturers making allowances aggregated 9.67 percent of their sales as compared with a rate of 2.03 percent given on sales to wholesalers by these same manufacturers. In 1930, allowances to chains were 4.99 percent on total sales made to them; the allowances to wholesalers, 1.42 percent on sales.

Grocery.—The total amount of the sales of all the 457 reporting manufacturers of grocery and miscellaneous related products to these grocery distributors amounted to 368.6 million dollars in 1929 and for the 464 reporting manufacturers to 351.6 million dollars in 1930. The total allowances in the former year were $6,306,213 and in the latter year, $6,439,514.

The sales of the manufacturers to the chains amounted to about 82 percent of the manufacturers' total sales to the three types of distributors for both years, and the chains obtained over 90 percent of all discounts and allowances granted by these manufacturers during the same period. The average rates of allowances on total sales of all manufacturers to chains (1.89 percent in 1929 and 2.02 percent in 1930) were over twice the rates granted to wholesalers (0.87 percent in 1929 and 0.91 percent in 1930) and nearly twice those given to cooperative chains (1 percent in 1929 and 1.04 percent in 1930).

Of the 457 manufacturers reporting in 1929 and 464 reporting in 1930, only 253 and 273, respectively, reported allowances to any of the three kinds of distributors. The total sales made to all distributors included in this study by the manufacturers making allowances were $188,724,483 in 1929 and the total allowances of $6,306,213 in that year amounted to 3.34 percent of sales. In 1930 the total sales of this group of manufacturers were $187,847,391 and the allowances of $6,439,514 were at the rate of 3.43 percent on sales.

In the former year the foregoing amounts of allowances were equal to 3.44 percent of the sales to chains made by those manufacturers giving allowances as compared with an average rate of 2.68 percent made on sales to wholesalers and 2.55 percent on sales to cooperative chains by the manufacturers giving allowances. In 1930, allowances of this same group of manufacturers to chains were 3.58 percent on total sales made to them and the allowances to wholesalers and cooperative chains, 2.33 percent and 2.54 percent respectively.

Drug.—The total amount of the sales of all of the 682 reporting manufacturers of drug and miscellaneous related products to these drug distributors amounted to 140.3 million dollars in 1929 and for the 688 reporting manufacturers to 138.4 million dollars in 1930. The total allowances in the former year were $3,450,283 and in the latter year, $3,798,933.

The sales of the manufacturers to the chains amounted to about 39 percent of the manufacturers' total sales to the three types of distributors for both years, but the chains obtained more than 70 percent of all discounts and allowances granted by these manufacturers during the same period. The average rates of allowances on total sales of all manufacturers to chains (4.48 percent in 1929 and 5.19 percent in 1930) were much larger than the rates to wholesalers (1.16 percent in 1929 and 1.11 percent in 1930) and also larger than those to independent department stores (2.49 percent in 1929 and 2.73 percent in 1930).

Of the 682 manufacturers reporting in 1929 and 688 reporting in 1930, only 237 and 256, respectively, reported allowances to any of

the three kinds of distributors. The total sales made to all distributors included in this study by the manufacturers making allowances were $46,339,325 in 1929 and the total allowances of $3,450,283 in that year amounted to 7.45 percent of sales. In 1930 the total sales of this group of manufacturers were $49,357,953 and the allowances of $3,798,933 were at the rate of 7.70 percent on sales.

In the former year the allowances were equal to 8.84 percent of sales to chains made by manufacturers giving allowances, as compared with an average rate of 5.35 percent made on sales to drug wholesalers and 7.66 percent on sales to independent department stores. In 1930 allowances to chains were 10.05 percent on total sales made to them by manufacturers giving concessions as compared with rates of 4.45 percent and 7.35 percent to drug wholesalers and independent department stores, respectively.

GROSS PROFIT AND AVERAGE SALES PER STORE OF RETAIL CHAINS

The report presents the data on the different kinds of chains, with the years combined for various periods from 11 to 22 years depending on the kind of business. The lowest average rate of gross profit for all years combined was found to be 19.3 percent for the combination grocery and meat chains and the highest, 49.3 percent for the confectionery chains. The report also covers the trend of gross profits and average sales per store, by years, for the period from 1909 to 1930 and the changes from year to year. Twenty-two of the twenty-six kinds of chains reported gross profit and sales data for 10 years or more, hence it was possible to show the trend over the period from 1921 to 1930. Thirteen kinds of chains show an upward trend in the rate and 9 a downward trend, in gross profits, while only 5 kinds showed an upward and 15 a downward trend in average sales per store. Two types were almost constant for the period.

Combining the chains showing an association of sales with size and those showing a corresponding relationship between size and rate of gross profit, it appears that in two types, drug and dollar-limit variety, the larger chains show higher rates of gross profits and higher average sales per store than do the smaller chains. In women's shoes and men's shoes the reverse was found to be true, the larger chains showing lower rates of gross profits and lower average sales per store. In grocery and men's and women's ready-to-wear there was found to be an inverse relationship between sales and gross profits, the larger chains tending to show higher rates of gross profit but lower average sales per store.

It was found that, in general, if one measures the advantages of the large chains over small ones, from the standpoint of gross profit alone, there is little to indicate any particular advantage of the

former over the latter in respect to the proportion of the retail selling price which is absorbed to care for the operating expenses and the net profits.

SALES, COSTS, AND PROFITS OF RETAIL CHAINS

This report is the first of 3 covering financial results of chain-store organizations and represents a study of reports of 1,337 chain-store companies for the 8 years 1913, 1919, 1922, 1925, 1927, 1928, 1929, and 1930. This sample of chain-store business has to do with net sales of more than $25,000,000,000, cost of merchandise sold being more than $18,000,000,000, with a resulting gross profit amounting to almost $7,000,000,000. This latter was in turn divided between operating expenses of close to $6,000,000,000 and net operating profits of little more than $1,000,000,000.

This study disclosed a relatively high degree of concentration of chain-store business within certain lines, as, for example, from the standpoint of the number of companies the following lines were the most important: Grocery, grocery and meat, drug, dollar-limit variety, women's ready-to-wear, men's and women's shoes, and dry goods and apparel. From the standpoint of the number of stores, the same commodity types had nearly the same degree of importance. Considering only the number of stores, the tobacco chains also assumed a place among the more important groups because of the two large tobacco chains. From the standpoint of the volume of business five kinds of chains were of outstanding importance. The grocery and meat chains reported sales of more than $8,799,000,000 and department store chains of upward of $4,400,000,000. The dollar-limit variety chains sold merchandise in excess of $4,000,000,000, grocery chains more than $2,000,000,000, and dry goods and apparel of a little over $1,000,000,000. These 5 commodity types, with aggregate sales of close to $20,600,000,000, accounted for 81 percent of the total sales of the 26 kinds of chains.

The cost of merchandise sold for all years and all chains combined averaged 72.59 percent of sales, the range being between 50.85 percent for the confectionery chains and 80.98 percent for the grocery and meat chains.

The aggregate average ratio of operating expenses to sales was found to be 22.96 percent, the range varying from 16.20 percent for grocery and meat chains to 43.11 percent for confectionery chains. Only five kinds of chains (grocery and meat, general merchandise, grocery, meat, and dry goods and apparel) had operating expense percentages below the average. The ratio of operating expenses to sales from 1919 to 1930 showed a decided upward trend in all kinds of chains except grocery and meat, drug, tobacco, dry goods, and general merchandise. No kind of chain reflected a downward trend in expense percentages.

Net operating profits varied greatly for the different kinds of chain-store business, the average rate on sales for all types combined being 4.45 percent and the range being from a low operating loss in the case of hats and caps of 0.42 percent to a high rate of profit for furniture chains of 11.46 percent. Generally, the rates of net operating profit were downward for the years studied, only one kind of business, meat, showing an upward trend. The study showed further that in the case of nine kinds of chains (grocery, grocery and meat, dollar-limit variety, dry goods and apparel, confectionery, women's shoes, men's and women's ready-to-wear, musical instruments and general merchandise) a marked tendency existed for the rate of net operating profit to sales to increase with increases in the size of the chain. Seven of these showed the highest percentages in the largest size groups.

This study of chain-store operations disclosed that a fairly substantial number of companies reported losses instead of profits from operations. This condition existed in some measure in all of the 26 kinds of chains and involved aggregate sales of over $1,500,000,000, the losses totaling $43,934,074. These losses average more than $40,000 per company-year, or slightly more than $2,000 per store-year for the chains sustaining the losses.

INVESTED CAPITAL AND RATES OF RETURN OF RETAIL CHAINS

Average business investment per company for all of the 26 kinds of chains, all 8 years combined, was $1,503,901, the range being from a low of $92,789 for men's furnishings chains to a high average of $15,759,113 per company for department store chains. The average per store for all kinds of chains was $27,157, the lowest average being $5,547 per store for the millinery chains and the highest $830,213 per store for department store chains. The average investment per store, considered from the standpoint of years, reflected rather definite upward trends from 1919 to 1930 in 11 of the 26 kinds of chains, including such prominent kinds as grocery and meat, grocery, dollar-limit variety, and tobacco. Ten kinds of chains, including drug, men's and women's shoe, and department store, reflected a downward trend in the per store investment for the same period and five other kinds were indeterminate.

Business income was found to average $223,809 per company, considering all kinds of business and years combined. Hat and cap chains report a loss of $2,290 per company, this being the only instance of an average loss in the 26 kinds of chains, and the highest average business income was for the department store chains, with an average of $1,547,915 per company. The per chain average for all chains was $4,041 and again the hat and cap group was low with a loss of $101 per store, while the department stores reflected an average income of $81,546 per store.

The rates of return on business investment are found to vary widely among different kinds of chains, the lowest being the negative rate or loss on investment of 0.62 percent for hats and caps and the highest a positive rate of return of 27.89 percent for millinery chains. The average for all 26 kinds of chains was 14.88 percent. Seventeen kinds of chains were found to be below and 9 kinds above the all-year average for all 26 kinds of business.

In nearly all lines of business the chains have shown a downward trend in rates of return on business investments from the year 1919 to 1930. No kind of chain showed a general upward trend for the period though rates for individual years at times showed increases above those of immediate preceding years.

The group of chains which reported operating losses as shown in the report on sales, costs, and profits of retail chains report also an aggregate business loss of a little more than $35,700,000, or a loss of 5.48 percent, upon the amount of capital invested in these loss-sustaining chains. The extent of unproductive capital among the 26 kinds of chains varied materially, only 1.3 percent of the capital of dollar-limit variety chains being reported by these loss companies, while in the hat and cap chains 42.8 percent of the aggregate capital employed for the 8 years showed a loss. The average business loss for this group of chains was $33,159 per company.

Tobacco chains presented the unusual picture of a group which, while operating the stores at a loss, nevertheless reported business income of $10,629 per company and a rate of return of 1.14 percent on the invested capital. This was due to miscellaneous business operations including revenues from leased apartments and interest on money loaned. The average rate of loss for the companies reporting losses was found to be 5.48 percent on the invested capital, in contrast to a positive rate of return of 14.88 percent for the all-company group.

Of the aggregate total capital employed by all reporting chains in all years, 10.95 percent was diverted to outside investments and in the case of the companies reporting losses 16.84 percent was used in that manner. The tobacco chains reporting losses diverted 60.61 percent of the total capital to outside activities such as investments in securities, real estate, etc. All reporting companies in this business, as a group, reflected very nearly the same condition with 56.28 percent of its capital used in outside investments.

Notwithstanding the general growth of chain-store business as a whole and the increase in size and great success of many individual chains, the tendency of most of the kinds of chains clearly appears to be: (1) Declining average sales per store, (2) decreasing business income per store, (3) decreasing turn-over of business investment, and (4) declining rates of return on investment over the period of time covered by this portion of the inquiry.

MISCELLANEOUS FINANCIAL RESULTS OF RETAIL CHAINS

This report presents certain phases of chain-store studies under five principal subjects, each of which is the outgrowth of some portion of the reports on sales, costs, and profits of retail chains, and invested capital and rates of return of retail chains.

The first subject has to do with the uses of capital, and application of funds of tobacco chains and illustrates forcibly to how great an extent the financial results of chain stores may be, and often are, affected by other than chain-store operations. A large proportion of the total capital was invested in outside operation and a number of tobacco chains reported operating losses on chain-store operations, but also earned substantial amounts upon outside investments. The operations of these chains were, therefore, analyzed to show the application or disposition of their funds and the sources from which they were derived. This portion of the report covers 11 companies for 5 years, 1925, 1927, 1928, 1929, and 1930.

It is found that of the total average funds 41 percent were paid out in dividends and this exceeded the net income by 1.43 points percent. Twenty-nine percent of the total average was invested in outside activities such as securities in other companies and real estate. Income from operations of the business provided less than 40 percent of all funds, borrowed capital 33 percent, and profit on capital assets sold 10 percent. These sources were found to be insufficient and working capital was decreased in a substantial amount.

Another section of this report has to do with the effects of wholesaling by retail stores. This presents financial information for a group of 64 chains in 1928, 71 in 1929, and 77 in 1930 which do some wholesaling in addition to retail business. Indications are substantial that a wide difference exists between the margins or gross profits of chains doing both kinds of business as contrasted with the strictly retail organizations in about half of the commodity types although it is difficult to tell how much is attributable to wholesaling operations. Usually operating expense figures are consistent with gross profit, that is, where the combination chains have higher percentages of gross profit than the resailing chains they also show higher operating expenses and vice versa.

Indications of the effect of wholesaling are less conclusive in the percentages of net operating profit. The difference in the average rate of return on investment is striking, the retail-wholesale group with a rate of 20.99 percent being nearly double that of the retail group with 11.50 percent return on its invested capital.

LEGAL ASPECTS OF THE INVESTIGATION

The field work of interviewing manufacturers in connection with the legal aspects of their discounts and allowances to customers, which was in progress at the end of the fiscal year 1931–32, was completed

late in the summer of 1932. The work of transcribing the interviews and tabulating the information has been completed and a study made of the decisions of the Commission and the courts with a view to answering the question of whether or not the granting of quantity prices available only to chain store distributors constitutes a violation of either the Federal Trade Commission Act, the Clayton Act, or any other statute.

Due to wide-spread interest in, and agitation for, State regulation and taxation of chain-store companies, some 132 chain store taxation bills have been introduced in legislatures of 42 of the 44 States which have held sessions in 1933. These have been studied and the previous work on the subject has been revised to include these later bills and laws.

The investigation and study of the legal questions have been continued throughout the fiscal year 1932–33 and a report is in course of preparation in response to the resolution.

COTTONSEED INDUSTRY

INQUIRY COMPLETED AND ENTIRE RECORD PRINTED AS A SENATE DOCUMENT

This inquiry was made in response to Senate Resolutions 136 and 147 Seventy-first Congress, first session. Resolution 136 requested the Commission to make a thorough investigation of the activities of corporations operating cottonseed oil mills in an alleged unlawful combination to lower and fix prices in the purchase of cottonseed and to sell cottonseed meal at a fixed price under threat of boycott. Resolution 147 directed the Commission to investigate charges that certain corporations operating oil mills were acquiring by purchase or otherwise the ownership and control of cotton gins for the purpose of destroying the competitive market for cottonseed and depressing and holding down the price paid to farmers for cottonseed, and further directed that the Commission hold public hearings in connection with the inquiry under both resolutions.

Preliminary to the holding of public hearings, representatives of the Commission interviewed crushers of cottonseed and officials of their trade associations. Whenever possible extensive examination was made of files of correspondence between crushers, association officials and buyers of cottonseed. Ginners, officials of ginners' associations, farmers, cottonseed brokers, cottonseed products brokers, officers of commercial exchanges, State and Government officials and others believed to have information regarding the sale of cottonseed, were also interviewed.

Public hearings were held in Atlanta, Ga.; Columbia, S.C.; Montgomery, Ala.; Raleigh, N.C.; Jackson, Miss.; New Orleans and Shreveport, La.; Houston and Dallas, Tex.; Oklahoma City, Okla.;

Little Rock, Ark.; Memphis, Tenn., and Washington, D.C. Under authority of Senate Resolution 292, Seventy-first Congress, second session, a stenographic record of all testimony taken and copies of all exhibits received have been printed in 12 parts as Senate Document 209, Seventy-first Congress.

In direct response to the resolutions, a report summarizing the investigation was submitted to the Senate on May 19, 1933. (This is being printed as part 13 of S.Doc. 209.) This final report, after outlining the origin and scope of the inquiry, deals with: (1) The Physical Aspects, Concentration of Mill Ownership, and Trade Organizations; (2) Seed Buying Channels and Their Control by Mills; (3) Cooperative Price Activities of Cottonseed Crushing Mills; (4) Mill Spread as a Determinant of Seed Prices; (5) Competitive and Discriminatory Effects of the Association's Seed Grading System.

In view of the facts disclosed by this investigation the Commission had reason to believe that certain of the activities and practices in the cottonseed industry were in violation of law. The trade practice conference rules adopted in 1928 and since widely used by the industry were abused both individually by members of the industry and cooperatively through trade association activities. Various divisions of the National Cottonseed Products Association added to and subtracted from the rules by adopting so-called "interpretations" of them. Some individual mill operators and their employees at times misrepresented the meaning and purpose of the rules in their dealings with seed sellers. These things contributed to the effectiveness of the association's price uniformity plan and of its supplemental practices which the commission had reason to believe were in undue restraint of competition. The Commission, therefore, rescinded its action of October 1, 1928, when it had accepted and approved of the trade-practice conference rules of the cottonseed industry, and ordered that complaints issue in accordance with the provisions of the Federal Trade Commission Act.

PRICE BASES

REPORT ON RANGE BOILER INDUSTRY IS BEING PREPARED

The inquiry known as price bases was instituted at the direction of the Commission in 1927. From the beginning only a small staff has been available for its prosecution. One of its objects is to ascertain the part that transportation charges play in the making of delivered and shipping-point prices. Examination of the various methods of basing prices with respect to location is made both to show what is indicated in respect to competition and what, if any, are the actual and potential effects of such methods upon competition, price levels, and cross freighting of commodities. These methods include both the f.o.b. shipping point and the basing point and zone delivered systems of basing prices.

A country-wide survey of price basing methods was made covering more than 3,500 reporting manufacturers representing practically all industries. The results of this survey together with a study of the basing-point formula as used by the cement industry were submitted in a report to Congress on March 26, 1932, which has since been printed, entitled "The Basing-Point Formula and Cement Prices."

Two other industries are now being studied in an intensive way—the range boiler industry, which uses in part "postage-stamp" delivered prices, and the industrial alcohol industry, which employs basing-point delivered prices.

"Postage-stamp" delivered prices are uniform for all destinations, either for the country as a whole or for some one or more zones of the country. Such prices carry disproportionate actual freight charges. Buyers at destinations freightwise near to the shipper with low freight rates will have included in their delivered prices more than the actual freight and buyers freightwise distant will have included in theirs less than the actual freight. The system eliminates the generally recognized advantage of a buyer's proximity of location in respect to the seller. In the case of commodities whose transportation costs are a considerable element of delivered price, this effects a discriminatory burden upon the nearby buyer who pays a much higher plant net price than does the distant buyer.

At the close of the fiscal year ended June 30, 1933, a report on the range boiler industry was in an advanced stage of preparation.

CEMENT INDUSTRY

INVESTIGATION COMPLETED AND REPORT TO THE SENATE

This inquiry was begun in March 1931, pursuant to a resolution adopted by the Senate February 16, 1931 (S.Res. 448, 71st. Cong., 3d sess.). The resolution directed the Commission to investigate competitive conditions in the cement industry and report to the Senate concerning the following:

The facts with respect to the sale of cement, whether of foreign or domestic manufacture, and especially the price activities of trade associations composed of either manufacturers or dealers in cement, or both.

The facts with respect to the distribution of cement, including a survey of the practices of manufacturers or dealers used in connection with the distribution of cement.

Whether the activities in the cement industry on the part of trade associations, manufacturers of cement, or dealers in cement constitute a violation of the anti trust laws of the United States and whether such activities constitute unfair trade practices.

The investigation was completed and a report submitted to the Senate on June 9, 1933. The report was ordered printed as Senate Document No. 71 (73d Cong., 1st sess.).

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The most interesting facts developed by the investigation relate to the methods used by manufacturers in maintaining uniform prices of portland cement. For about 30 years cement manufacturers have used what is known as the multiple basing point price method of computing and quoting delivered prices for cement. Manufacturers have steadfastly refused to quote mill prices. Delivered prices were arrived at through the application of a formula, the essential elements of which were the basing point prices at selected mills and the commercial railroad freight rate from the basing point to destination. The formula delivered price was the lowest combination of basing point price plus freight rate to the delivery point. Delivered prices were made by this formula whether used in meeting open competition or in submitting sealed bids to all classes of purchasers. Current basing point prices have been common knowledge to all cement manufacturers. Each sales manager has kept himself thoroughly posted on the base price at each basing point mill. A compilation of freight rates furnished by the Cement Institute has supplied each member with accurate information as to railway freight rates from each basing point mill to every freight station in the member's territory.

The letter submitting the report contained the following statement concerning basing point prices:

> The multiple basing point pricing system as developed by the cement industry has a tendency to lessen price competition. The system forms the basis for arriving at uniform delivered prices of cement and destroys the value of calling for sealed bids by the Government and other large purchasers. The promptness of all other manufacturers in meeting changes in delivered prices caused by changes in basing point prices emphasizes the rigid application of the system by the industry. Certain incidental practices correcting conditions which threatened the uniform application of the system, such as uniformly adopting arbitrary prices at certain points and acting in concert with dealer organizanions in penalizing and eliminating sales of cement for truck delivery, have strengthened the effectiveness of the multiple basing point pricing system.
>
> Price competition in the cement industry might be restored in large measure if each manufacturer in submitting bids would quote an f.o.b. mill price, based on his own operations and independent of any knowledge or information as to how competitors probably will arrive at the prices they will submit.

BUILDING MATERIALS

LETTING OF GOVERNMENT BUILDING CONTRACTS IS INVESTIGATED

This investigation was undertaken in response to Senate Resolution 493 and the Commission's order supplemental thereto which was issued April 27, 1931. Briefly, the resolution calls for all facts relating to the letting of Government building contracts and for information concerning whether or not there has been price fixing on the materials used in construction work of which there are some two hundred and fifty.

The various departments of the Government authorized to award construction contracts deal almost exclusively with general contractors. Preliminary information concerning the sources of building materials used in Government buildings was obtained from these contractors by means of questionnaires. By the same method general contractors were called upon to submit their views as to whether or not there has been price fixing among subcontractors or material men.

The conditions of the Commission's appropriation made it necessary that the investigation be confined to a representative number of contracts and materials. Early in the investigation it became obvious that the specification, selection, and approval of materials for use in Federal buildings were of primary importance and were perhaps the most controversial matters in the entire program. It likewise was clear that the exterior materials, especially the natural products, were the ones over which such controversies most frequently arose. The initial selection of materials was therefore confined to granite, marble, limestone, and sandstone, and investigators were sent into the field to develop facts concerning competitive conditions in these industries. Later terra cotta, which to some extent is in competition with stone, was added to the list of materials under investigation. Some work of a general nature was also undertaken on brick, but this industry is scattered so generally throughout the United States that a comprehensive investigation would require expenditure of funds far in excess of those available.

Facts relating to the letting of Government contracts were obtained largely from the Treasury Department, because this is the most important contracting unit of the Federal Government. Some 40 jobs were selected for investigation. In making this selection, the geographical location of the building, its size, cost, and the kind of materials used were considered in order that the picture developed might be truly representative.

The field work as outlined above was started in October 1931 and completed in June 1932. The data collected is now being compiled and the report is expected to be completed in a few months.

A report based on the information and facts developed by this investigation has been written. It is now being considered by the Commission before submission to the Senate in response to the resolution authorizing the investigation.

PART III. GENERAL LEGAL WORK

DESCRIPTION OF PROCEDURE

LEGAL INVESTIGATION AND REVIEW

CONSOLIDATIONS AND MERGERS

STIPULATION PROCEEDINGS

REPRESENTATIVE COMPLAINTS

ORDERS TO CEASE AND DESIST

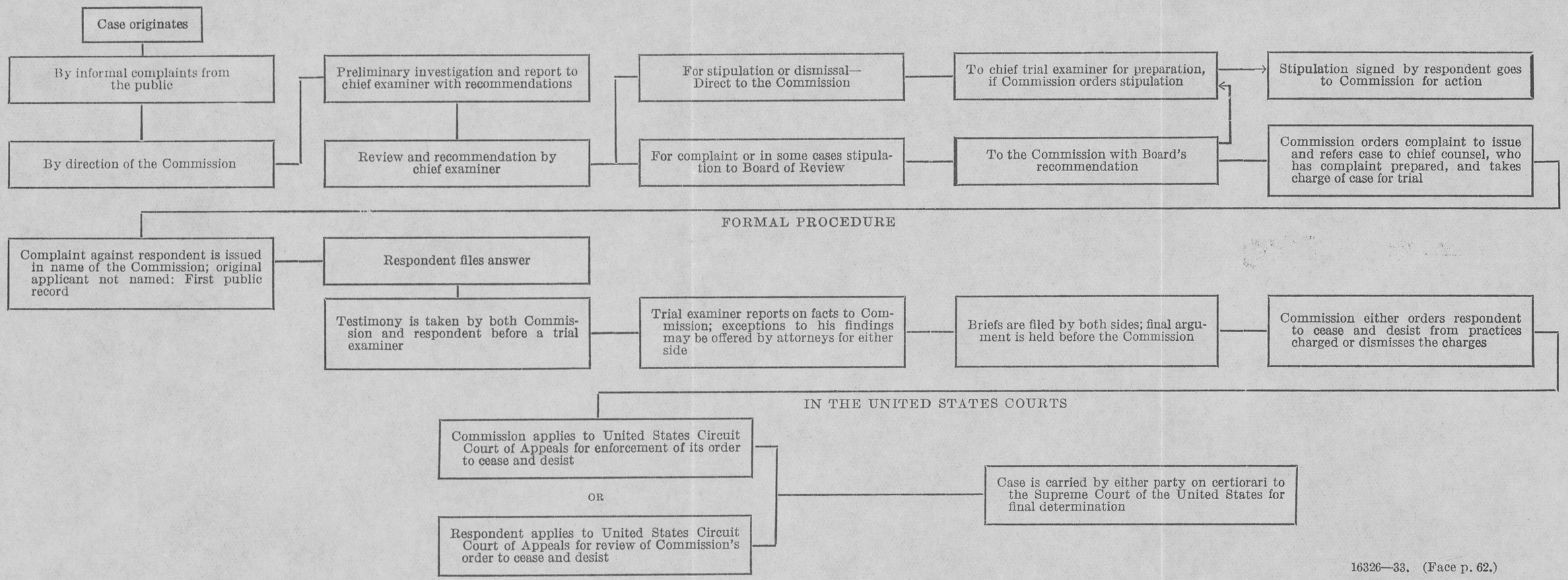
TYPES OF UNFAIR COMPETITION

CASES IN THE FEDERAL COURTS

TABULAR SUMMARY OF LEGAL WORK

OUTLINE OF PROCEDURE IN CASES BEFORE THE FEDERAL TRADE COMMISSION

[Illustrating broadly the procedure under which an informal complaint from a member of the public regarding an unfair method of competition may result in formal complaint by the Federal Trade Commission, followed by order to cease and desist and appeal to the courts, finally reaching the Supreme Court of the United States. While this hypothetical case, for purposes of illustration, progresses throught the entire process, it should be noted that the larger number of cases do not survive the whole journey. Many cases are disposed of early in the procedure as the charges may be dismissed at any stage. Only a small percentage of the cases reaching the status of an order to cease and desist are carried into court. For the procedure of the special board of investigation handling false advertising, see page 123; for trade practice conference procedure, see page 115; and for export trade procedure, see page 131.]



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PART III. GENERAL LEGAL WORK

DESCRIPTION OF PROCEDURE

A case before the Federal Trade Commission may originate in several ways. The most common origin is through application for complaint by a competitor or from other public sources. Another way in which a case may begin is by direction of the Commission.

No formality is required for anyone to make an application for a complaint. A letter setting forth the facts in detail is sufficient, but it should be accompanied by all evidence in possession of the complaining party in support of the charges being made.

INFORMAL PROCEDURE

When such an application is received, the Commission, through its legal investigating division, considers the essential jurisdictional elements. Is the practice complained of being carried on in interstate commerce? Does it come under jurisdiction of the Federal Trade Commission? Would the prosecution of a complaint in this instance be in the public interest?

It is essential that these three questions be capable of answer in the affirmative.

Frequently it is necessary to obtain additional data by further correspondence or by a preliminary investigation before deciding whether to docket an "application for issuance of complaint."

Once an application is docketed it is assigned by the chief examiner to an examining attorney or a branch office of the Commission for investigation. It is the duty of either to obtain all facts regarding the matter from both the applicant and the proposed respondent.

Without disclosing the name of the applicant, the examiner interviews the party complained against, advising of the charges and requesting submission of such evidence as is desired in defense or explanation.

After developing the facts from all available sources, the examining attorney summarizes the evidence in a final report, reviews the law applicable thereto, and makes a recommendation as to action.

The entire record is then reviewable by the chief examiner. If it appears to be complete, it is submitted with recommendation to the board of review or to the Commission for consideration. Recommendations for dismissal outright or upon the signing by the proposed

respondent of a stipulation of facts and an agreement to cease and desist from the unlawful practice charged ordinarily are sent direct to the Commission. Recommendations for complaint and for certain types of stipulations go to the board of review.

If submitted to the board of review, all records, including statements made by witnesses interviewed by the examiners, are reviewed and passed on to the Commission with a detailed summary of the facts developed, an opinion based on the facts and the law, and the board's recommendation.

The board may recommend (1) dismissal of the application for lack of evidence in support of the charge or on the ground that the charge indicated does not violate any law over which the Commission has jurisdiction, or (2) dismissal of the application upon the signing by the proposed respondent of a stipulation of the facts and an agreement to cease and desist the unlawful practice charged, and (3) issuance of a complaint without further procedure.

Usually if the board believes that complaint should issue, it grants the proposed respondent a hearing. Such hearing is informal, involving no taking of testimony.

The procedure as outlined thus far is applied in all cases except those pertaining to false and misleading advertising in newspapers and periodicals as handled by the special board of investigation. (See p. 131.)

FORMAL PROCEDURE

Only after most careful scrutiny does the Commission issue a complaint. The complaint and the answer of respondent thereto and subsequent proceedings are a public record. The case is now in charge of the Commission's chief counsel for preparation of complaint and trial of the case before the Commission.

A complaint is issued in the name of the Commission acting in the public interest. It names a respondent and charges a violation of law, with a statement of the charges. The party first complaining to the Commission is not a party to the complaint when issued by the Commission, nor does the complaint seek to adjust matters between parties: The proceeding is to prevent unfair methods of competition for the protection of the public.

The Commission's rules of practice and procedure provide that in case the respondent desires to contest the proceedings he shall, within 30 days from service of the complaint, file with the Commission an answer to the complaint. The rules of practice also specify a form of answer for use should the respondent decide to waive hearing on the charges and not contest the proceeding.

Failure to appear or to file an answer within the time specified—

shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In a contested case the matter is set down for taking of testimony before a trial examiner. This may occupy varying lengths of time according to the nature of the charge or the availability and number of witnesses to be examined. Hearings are held before a Commission trial examiner, who may sit in various parts of the country, the Commission and the respondent each being represented by its own attorneys.

After the taking of testimony and the submission of evidence on behalf of the Commission in support of the complaint, and on behalf of the respondent, the trial examiner prepares a report of the facts for the information of the Commission, counsel for the Commission, and counsel for the respondent. Exceptions to the trial examiner's report may be taken by counsel for either side.

Within a stated time after receipt of the trial examiner's report, briefs are filed and the case comes on for final argument before the full Commission. Thereafter the Commission reaches a decision either sustaining the charges of the complaint or dismissing the complaint.

If the complaint is sustained, the Commission makes a report in which it states its findings as to the facts and conclusion that the law has been violated, and thereupon an order is issued requiring the respondent to cease and desist from such practices.

If the complaint is dismissed, an order of dismissal is entered.

These orders constitute the final functions of the Commission as far as its own procedure is concerned.

CASES MAY BE TAKEN TO FEDERAL COURTS

No penalty is attached to an order to cease and desist, but a respondent against whom it is directed is required within a specified time, usually 60 days, to report in writing the manner in which he is complying with the order. If he fails or neglects to obey an order while it is in effect, the Commission may apply to a United States circuit court of appeals for review of the Commission's order.

The respondent may also petition for review. The circuit courts have power to affirm, modify, or set aside the order of the Commission. These proceedings may be carried by either party on certiorari to the Supreme Court of the United States for final determination.

LEGAL INVESTIGATION AND REVIEW

PRELIMINARY INQUIRIES PRIOR TO FORMAL COMPLAINT

The legal investigating work of the Commission embraces all new cases brought before the Commission upon application for complaint and the disposition of these cases up to the point where they are passed on to the board of review for further recommendation or sent to the Commission.

This investigational work is supervised by the chief examiner. It includes the investigation of complaints preliminary to the taking of formal action for the correction of such unfair methods of competition under the law administered by the Commission as may be found to exist.

Tables showing the number of legal investigations handled since the work began will be found on pages 106 and 107. When the present fiscal year began there were pending 423 preliminary or undocketed cases of alleged unfair methods of competition. During the year 1593 new applications for complaint were received. Preliminary investigations were made by the chief examiner in 1538 of these cases, leaving 478 undocketed applications for complaint yet to be handled.

Of the preliminary cases, 264 were docketed as regular applications for complaint. These, with 137 pending at the first of the year, totaled 401, of which 287 were disposed of during the year.

A number of the attorneys of the chief examiner's staff usually assigned to the investigation of regular complaints were engaged on the special inquiries being made pursuant to Senate resolutions, namely, cottonseed, peanut prices, cement, and building materials. However, the regular work has been kept well in hand, notwithstanding the fact that no vacancies could be filled or new appointments made. This is evidenced by the fact that the average length of time on all docketed applications as of June 15 of the present year was but 7 days more than of the same date last year.

The chief examiner also conducts, by direction of the Commission or on requests of different units of the Commission, supplemental investigations as follows: (1) In matters originating with the special board of investigation; (2) where additional evidence is necessary in connection with formal complaints; (3) where it appears or is charged that cease and desist orders of the Commission are being violated; and (4) where it appears that stipulations entered into between the respondent and the Commission to cease and desist from unfair competitive practices are not being kept in good faith.

The legal investigating work of the Commission is directed from its main office in Washington and carried on through that office and the four branch offices situated at 45 Broadway, New York City; 608 South Dearborn Street, Chicago; 544 Market Street, San Francisco; and 801 Federal Building, Seattle. Business men may confer at these places with qualified representatives of the Commission regarding cases and with reference to rulings made by the Commission.

BOARD REVIEWS CASES FOLLOWING INQUIRIES

Following preliminary investigation by the chief examiner's staff, 98 applications for complaint were reviewed by the board of review, which consists normally of five lawyers. Ninety-seven of these cases

were forwarded during the year, leaving one pending at the close. Of this number 30 applications were recommended for dismissal, 15 for complaint, 34 for stipulation, while in 16 cases further investigation was recommended and in 2 there were miscellaneous recommendations. In connection with these applications 13 hearings were held.

CONSOLIDATIONS AND MERGERS

MOVEMENT TOWARD VOLUNTARY DECENTRALIZATION IS SEEN

Activity in the field of consolidations and mergers appears to have been at a lower level during the fiscal year ending June 30, 1933, than in the preceding year. A number of comparatively large organizations were placed in receivership during the year. The last 6 months of the year, however, indicated a decrease in industrial liquidation. Whereas the trend toward consolidation of integrated industries was very pronounced in 1929 there is indication of a movement toward voluntary decentralization and dissolution. Of interest in this connection is a recent recommendation by directors to stockholders of the world's largest drug company for the reestablishment of its five principal operating subsidiaries as independent companies and dissolution of the holding company.

Six preliminary inquiries involving acquisitions, consolidations, and mergers were pending at the beginning of the year; 53 additional inquiries were instituted during the year and 4 were pending at the close of the year, indicating a disposition of 55 preliminary matters during the year. Fifty-two of these matters were recommended for filing without docketing and three for docketing as applications for complaint under section 7 of the Clayton Act.

Five of the fifty-two matters filed without docketing pertained to acquisitions, consolidations, or mergers which failed of consummation; 2 pertained to the organization of joint selling agencies and 1 pertained to the organization of a joint manufacturing unit. Thirty-four of the matters involved acquisition of assets and ten involved acquisition of capital stocks.

Seven of the ten matters involving capital stocks were filed without docketing because, due to the acquisitions, there was no lessening of competition or tendency toward monopoly.

Among the 34 matters filed without docketing involving acquisition, consolidation, or merger of assets, 26 involved competitive products, 32 involved competitive areas, and in 27 situations the businesses were similar in character. In three of the situations the assets were purchased from receivers or assignees in bankruptcy.

Eight docketed matters involving section 7 of the Clayton Act were pending at the beginning of the year; 2 were added to the docket during the year, 6 were dismissed or disposed of during the year, and 4 were pending at the close of the year.

Four complaints involving section 7 of the Clayton Act were pending at the beginning of the year, 1 was issued during the year, 3 were dismissed or rescinded during the year, and 2 were pending at the close of the year.

There were no section 7 matters pending in the courts at the beginning or at the close of the year. However, during the year an order was entered on a complaint directing Arrow-Hart & Hegeman Electric Co. to divest itself of ownership of stock and a further direction to divest itself of plant and properties acquired through a merger of companies engaged in the manufacture of electrical devices in competition in interstate commerce.

A petition to review the order of the Commission was made to the United States Circuit Court of Appeals for the Second Circuit, which Court, on May 29, 1933, affirmed the order.

The Commission and the Department of Justice have concurrent jurisdiction in the enforcement of section 7 of the Clayton Act. As a result of court decisions in a series of cases involving Western Meat Co., Swift & Co., Thatcher Manufacturing Co., International Shoe Co., and V. Vivaudou, Inc., enforcement of section 7 is limited to those cases or situations wherein the acquisition, consolidation, or merger when effected through purchase of capital stock, may result in a substantial lessening of competition or restrain commerce in any section or community, or may have the effect of creating a monopoly of any line of commerce.

The section has no application to corporations purchasing stock solely for investment purposes, and, further, the Commission's jurisdiction is limited to organizations other than common carriers, banks, and financial institutions.

STIPULATIONS TO END UNFAIR PRACTICES

THIS PROCEDURE PROTECTS THE PUBLIC AND SAVES MONEY

The Commission believes that its stipulation procedure is protecting the American consumer from numerous unfair methods of competition which, in the aggregate, are an important consideration. It is apparent also that large sums of money that otherwise would be spent in litigation are being saved the public.

The stipulation procedure provides an opportunity for the respondent to enter into a stipulation of the facts and voluntarily agree to cease and desist forever from the alleged unfair methods set forth therein. Such stipulation is subject to the final review and approval of the Commission.

A potential respondent decides he would rather quit the practice of which complaint is made than go through with trial and other formal procedure. If the Commission approves such a course, he signs an agreement to "cease and desist forever" from the unfair practice with the understanding that should he ever resume it the

facts as stipulated may be used in evidence against him in the trial of a complaint which the Commission may issue.

Commodities mentioned in stipulations are of an infinite variety. Taken at random there would be such a list as follows: Hats, shoes, suit goods, fly-catching devices, tombstones, toy airplanes, perfumes, blankets, electrotherapeutic instruments, synthetic beverages, horseshoes, radiocabinets, sea food, and tooth paste.

Applications for complaint are frequently disposed of by the stipulation method, particularly in cases where the practice complained of is not so fraudulent or vicious that protection of the public demands the regular procedure of complaint. The question of whether a respondent shall be permitted to sign a stipulation is entirely within the discretion of the Commission as the disposition of a case by stipulation is not a right but a privilege extended by the Commission.

Stipulations in which various individuals and companies agreed to cease and desist from unlawful practices charged were approved and accepted by the Commission during the fiscal year in 98 cases.

These cases are in addition to stipulations concerning cases of false and misleading advertising. (See p. 123.)

During the 7½ years in which the stipulation system had been in effect, as of June 30, 1933, a total of 1,065 stipulations had been approved and accepted by the Commission, although 13 had been rescinded. In the special false and misleading advertising class, 529 stipulations had been approved and accepted during the period from May 1929 to June 30, 1933.

REPRESENTATIVE COMPLAINTS

MAJORITY INVOLVE UNFAIR METHODS OF COMPETITION

All but 1 of the 53 formal complaints issued during the year charged the use of unfair methods of competition violative of section 5 of the Federal Trade Commission Act. The one remaining complaint issued charged violation of section 7 of the Clayton Act by the acquisition of the capital stock of competing concerns. No complaints were issued during the year under the three other sections of the Clayton Act administered by the Commission, namely, section 2 (price discrimination), section 3 (tying contracts), and section 8 (interlocking directorates). No complaint was issued under section 5 of the Federal Trade Commission Act as extended by section 4 of the Export Trade Act.

Herewith are presented brief summaries of the charges contained in a few of the complaints issued by the Commission during the fiscal year. Unless otherwise indicated, the practices charged are violative of the Federal Trade Commission Act. These complaints are fairly representative.[2]

[2] Attention is especially invited to the fact that most of these complaints are pending, and, consequently, the Commission has reached no determination as to whether the law has been violated as charged therein.

MISREPRESENTING LEATHER GOODS

In a complaint issued March 29, 1933, respondents as copartners were charged with labeling and describing luggage manufactured and sold by them as "genuine seal" thereby importing that such luggage is made of the outside or topside of the sealskin, as said term and the word "seal" alone are commonly understood by the purchasing public, when in fact said luggage is made from the flesh side of the sealskin which is ordinarily described in the trade as "split seal." It is further charged that said luggage is finished to imitate the outside leather and that by reason of such appearance and the use of said terminology the purchasing public is misled and competitors injured. The complaint states that split seal is much inferior in price and durability.

Respondents, in their answer, deny using misleading practices but contend that in the trade the outside layer of the skin is known as "top grain genuine seal" and that the under layers are referred to as "seal." It is further contended that there is a difference in appearance between the two products that is apparent to persons familiar with such matters. However, respondents express approval of a movement in the leather industry to label products thereof as "top grain" or "split" as the case may be and state that they are now following that practice.

MISREPRESENTING OLIVE OIL AS BEING IMPORTED FROM ITALY

The question presented in a complaint issued by the Commission in October 1932 has to do with statements made in regard to olive oil or terms used to designate the same which, it is alleged, represent or import that such olive oil is imported from Lucca, Italy, or has Italian origin. It is alleged that Lucca, Italy, is one of the largest olive-oil centers in the world and that olive oil produced there is known among dealers and consumers for its fine quality and delicate flavor and that olive oil imported from Italy is known as being of a quality and flavor superior to all other olive oils. Said practices of respondent are alleged to mislead dealers and the consuming public and to result in injury to respondent's competitors.

MISBRANDING AND MISREPRESENTING SHELLAC SUBSTITUTE

In December 1932 the Commission issued a complaint against a corporation charging it with misbranding its products and misrepresenting the nature thereof by means of the words "shellac products" in its corporate name and the use of said name on letterheads, printed matter, etc., and also by the wording on the labels on certain of its said products in which the words "White Shea-Lac" were featured as well as said corporate name, when in fact said products were not manufactured of genuine shellac gum. The respondent filed an

answer denying generally the allegations of the complaint and alleging therein specifically that the wording on its labels reads "White Shea-Lac—Substitute Shellac."

MISUSE OF EXPRESSION "DIRECT FROM MILLS" AND MISLEADING OFFER OF FREE GOODS

In a complaint issued by the Commission in July 1932 the respondents were charged with advertising dress goods as "direct from mills" and as "fresh goods direct from mills" thereby implying that respondents own or operate a mill and leading customers to believe that they thereby saved middleman's profit when in fact respondents did not own or operate a mill and customers effected no such savings in buying from them. It is also alleged that respondents falsely offered free goods with purchases when in fact the price of such goods was included in the total bill. It is further charged that respondents misled purchasers as to yardage of goods purchased and the price thereof by splitting the goods so as to double the lineal yardage instead of selling it at the customary and usual width.

MISREPRESENTING MEN'S CLOTHING

One complaint issued during the year charged the individual respondent, trading under various successive trade names, with taking orders for men's clothes through salesmen or solicitors with the representation that such clothes were tailor-made when in fact such clothes were not tailor-made but were made without regard to measurements furnished and did not fit and were not altered to fit purchasers of the same. It was further charged that materials furnished did not conform to samples from which orders were given. The complaint further sets forth that respondent had made a practice of trading under one trade name until his said practices brought unfavorable notoriety and then adopting a new name under which the business was continued. Respondent filed an answer stating that an assignment for the benefit of creditors had been made in respect to the business previously conducted by him and that he had started a new business under a new trade name. He further stated that he was making an effort to eliminate practices covered by the complaint and blamed the salesmen in the field for making misrepresentations, such as those alleged, in order to close sales.

MISREPRESENTING OPTICAL GOODS

The question of misrepresentation in connection with the mail-order sale of optical goods is involved in a complaint issued by the Commission in October 1932. It is averred that respondents as copartners trading under various trade names advertised for sale a certain well-known kind and make of spectacles, frames and lenses,

and filled orders for same with an inferior quality of goods differing in make and kind from that advertised. It is also charged that respondents advertised spectacles free to prospective users when in fact such spectacles were not furnished free. It is further alleged that respondents represented that an eye-tester sent to customers by them was endorsed by the world's most famous specialist and by eye hospitals and that by its use better glasses could be furnished by mail than the average optometrist could furnish in his own office, as well as other misrepresentations in regard to said device.

Respondents filed an answer denying the allegations of the complaint.

MISREPRESENTATION OF PATENT MEDICINES

A number of complaints were issued involving alleged misrepresentations and exaggerations of the therapeutic effects and uses of so-called "patent" medicines. One such complaint involves a preparation which is alleged to be misrepresented in advertising in that it is represented to be a remedy for or to relieve various diseases and bodily ailments for which said medicine is not adapted, or only to a slight extent or in a very limited way. It is also alleged that by the use of the word "health" in the name of the product it is represented as being a general health restorative when in fact it has only a limited therapeutic use. Respondent in his answer denied that his representations are misleading and alleged that they truthfully and accurately state the medicinal value of his medicine.

MISNOMER OF FLOOR FINISH

The question of misleading use of the name to describe a floor finish is involved in a complaint issued by the Commission in July 1932. The product in question is described as "liquid wax", but it is alleged that the liquid, which contains in solution a certain percentage of solids other than wax, when applied, does not leave a film of pure wax, or one of the same characteristics as pure wax, and thus is not properly named. It is alleged that the expression "liquid wax" as applied to a preparation for application to floors is commercially and popularly known as a product composed solely of wax in solution with some solvent which leaves a film of pure wax on the surface to which it is applied. The respondent filed an answer denying generally the allegations of the complaint and contending that the use of said expression was justified by general usage and that it truly and accurately describes its product.

RADIOACTIVE DEVICE

On October 24, 1932, a complaint was issued charging a corporate respondent with misrepresenting that a container manufactured and sold by it would cause water placed therein to become radioactive

and that the use of the same would cure or benefit persons suffering from numerous ailments, when in fact said device did not contain radium or any radioactive substance in sufficient quantity to impregnate water placed therein with sufficient radioactive substance to cause it to have any therapeutic effect when used as directed. It is further alleged that radio active substances are dangerous and apt to result in harm when taken internally unless taken under the direction and care of a competent physician. An answer signed by the former secretary of respondent company alleges that the company has quit business and asserts that the allegations of the complaint could be refuted if hearings should be held.

REPRESENTING WINDOW SHADE "SECONDS" AS "MILL RUN"

A respondent corporation engaged in the sale and distribution of window shades in interstate commerce is alleged in a complaint issued by the Commission to have represented window shades sold by it as having been made from first-quality cloth when in fact such shades were made from defective or partially defective cloth known to the trade and purchasing public as "seconds." This representation is alleged to have been made by use of the expression "mill run" in labeling and describing the shades. Respondent in its answer says that it has discontinued the term "mill run" in connection with its shades and consented to the issuance of an order to cease and desist from the use of the term in connection with "window shades which do not represent the entire and true run of the mill."

OTHER TYPES OF MISREPRESENTATION

Other cases in which the Commission during the year has issued complaints involving misrepresentations include a wide range of commodities among which are renovated second-hand hats sold without disclosure of the fact that they are second-hand, men's shirts, shoes, plants, flowers and bulbs, seed potatoes, health foods, rat and mice exterminators, malt sirup, tackers and staples, corn cure, treatment for venereal and blood diseases, substitute coffee seed, candy lottery schemes, olive oil, dog medicines, device and medicine for deafness, scissors, poultry remedies, stock and animal medicines, proprietary medicines, men's furnishings, flower seeds, hosiery, alfalfa seed, depilatory products, encyclopedias, and mattresses.

PENDING CASES AT CLOSE OF YEAR

At the end of the fiscal year 144 formal, public records cases involving charges of unfair methods of competition in violation of section 5 of the Federal Trade Commission Act, as well as acquisition of stock in violation of section 7 of the Clayton Act, were pending. Among the practices embraced in such cases under said section 5

were combinations and agreements to fix prices, suppress competition and restrain trade, lottery schemes, commercial bribery, and various forms of misbranding and deceptive representations.

ORDERS TO CEASE AND DESIST

SIXTY-SIX ORDERS ARE ISSUED IN FISCAL YEAR

The Commission issued orders to cease and desist in 66 cases during the year.

As in past years, respondents upon whom the commission served its orders have, in a great many cases, accepted the terms and filed reports with the Commission signifying compliance therewith. In some of the cases the respondents opposed the proceeding and probably will file petitions for reivew of the Commission's findings and orders with the United States Circuit Courts of Appeal.

ORDERS TO CEASE AND DESIST ISSUED DURING YEAR

Respondent	*Location*
Altoona Malt Co. et al	Altoona, Pa.
American Academic Research Society	Holyoke, Mass.
American Radium Products Co	Los Angeles.
Armand Co., Inc., et al	Des Moines.
Arrow-Hart & Hegeman, Inc., et al	Hartford.
Blatz Brewing Co., Inc	Milwaukee.
Brier & Co., Samuel	Philadelphia.
Bulova Watch Co., Inc	New York City.
Cassoff, L. F	Brooklyn.
Central Quilt & Mattress Manufactory	Newark.
Congo Pictures, Ltd., et al	Los Angeles.
Diamond Fur Industries	Inglewood, Calif.
Drollinger, Howard B	Washington, D.C.
Export Petroleum Co. of California, Ltd	Los Angeles.
Farber Bros	New York City.
Fatato, L., Inc	Brooklyn.
Feldman & Sons	Baltimore.
Fleck Cigar Co	Reading, Pa.
Gennett, Jacob	Newark.
Gibbin, Anna M	Pemberton, N.J.
Gilman Hat Co	New York City.
Globe Hat Works	Do.
Grand Hat Co	Do.
Guerlin, Arthur, Inc	Do.
H. & H. Hat Manufacturing Co	Do.
H. & S. Publishing Co., Inc	Chicago.
Harris, M	Philadelphia.
Havatampa Cigar Co., Inc	Tampa.
Heller Manufacturing Co., Inc	Cleveland.
Herman Hat Co	New York City.
Hughes, E. Griffith, Inc	Rochester.
Jeffrey Jewelry Co., Inc	Chicago.
Lee Co., George H., Inc	Omaha.

Orders to cease and desist issued during year—Continued

Respondent	*Location*
Lee Institute, Nancy, Inc	New York City.
Limoges China Co., Inc	Sebring, Ohio.
Machine Tool Distributors, Chicago District, et al	Chicago.
Madison Mills, Inc	New York City.
Maf Hat Works, Inc	Do.
Mahaffey Commission Co., Inc., et al	Chicago.
Manhattan Hat Co., Inc	New York City.
Menke Grocery Co., Inc	Kansas City, Mo.
Michelsen Co., H., Inc	New York City.
Migdall, Ben, et al	Chicago.
National Importing Co	New York City.
National Railway Instruction Bureau	East St. Louis.
Natural Eyesight Institute, Inc	Santa Monica.
Northern Fruit & Produce Co., Inc., et al	Chicago.
O'Brien & Co	Seattle.
Pacific Extension University	Berkeley, Calif.
Perpetual Encyclopedia Corporation et al	Chicago.
Prime Hat Co	New York City.
Prospect Hat Co., Inc	Do.
Radium-Active Remedies Co., Inc	Pittsburgh.
Rochester Nurseries, Inc	Rochester.
Roggen Bros. & Co., Inc	New York City.
Sinclair Manufacturing Co., Inc., et al	Terre Haute.
Southern California Laundry Owners Association et al	Los Angeles.
Syncro Motors Co	Battle Creek.
Technical Chemical Co	Dallas.
Therenoid, Inc., et al	New York City.
Tiffany Laboratories, Inc	Cleveland.
Venice Importing Co	Brooklyn.
Weil Corset Co., Inc	New Haven.
Weiss & Klau Co., Inc	New York City.
Western Bottle Manufacturing Co	Chicago.
Yocum Bros., Inc	Reading, Pa.

REPRESENTATIVE CASES RESULTING IN ORDERS

A number of representative cases resulting in orders to cease and desist issued during the fiscal year are described below. Unless otherwise indicated these orders pertain to violations of the Federal Trade Commission Act.

RESALE PRICE MAINTENANCE

Armand Co., Inc., Des Moines.—The Commission in its findings of fact found that during the years 1920 and 1921 and until July 1, 1922, the Armand Co. requested its dealers to make to it a written and signed declaration of intention as to the manner in which they intended to resell the Armand Co.'s products and refused to sell such dealers until and unless it received the signed declaration of intention to observe the resale prices suggested by the Armand Co.

The Commission found that during this period of time a number of large wholesale dealers handling cosmetics were unable to obtain

Armand products from the Armand Co. until they had given that company assurance that its suggested resale prices would be maintained.

The Commission also found that beginning on or about July 1, 1922 and continuing to the time the Commission's complaint was issued the Armand Co. required the wholesale and retail dealers to enter into agreements or understandings with it that they would resell the Armand products at prices suggested by the Armand Co. and would refuse sales to any dealer who would not maintain such resale prices, and many wholesale dealers and one mail order house were required to enter into such agreements or understandings before they could obtain a supply of Armand products to sell to their trade.

It was also found by the Commission that the direct effect and result of the practices of the Armand Co. has been and now is to suppress competition among wholesalers and retail dealers in the distribution and sale of the Armand Co. products; to constrain wholesalers and retailers to sell these products at prices fixed by the Armand Co. and to deprive the ultimate purchaser of products of the advantage in price which they otherwise would obtain from an unobstructed flow of commerce.

The order of the Commission requires the Armand Co., Inc., its officers, agents, and representatives, to cease and desist from entering into, directly or indirectly with wholesale or retail dealers, contracts, agreements, or understandings, promises or assurances, that respondent's products are to be resold by such dealers at prices specified or fixed by the Armand Co. and are not to be resold to price-cutting retail dealers.[3]

SHORT FILLING OF CONTAINERS SOLD IN EXPORT TRADE

Export Petroleum Co. of California, Ltd., Los Angeles.—This case pertains to a violation of section 5 of the Federal Trade Commission Act as extended by section 4 of the export trade act. It was alleged in the complaint that respondent sold and shipped gasoline in export trade in cases of 2 cans of standard size with a capacity of 5 gallons per can and 10 gallons per case which were filled only to the extent of 9.6 gallons per case, or in other quantities less than 10 full gallons per case. It was further alleged that in some instances of such sales both the cases and cans were unmarked as to the contents thereof, while in other instances the cases were stamped "2/5 gallon tins," or the cans were stamped "5 U.S. gallons." It was alleged in the complaint that respondent indicated the exact liquid contents of such shipments on quotation blanks and invoices and that the original purchasers were not misled as to the quantity of gasoline received, but it was asserted that said practice placed in the hands of retailers

[3] The Armand Co., Inc., has indicated its intention through counsel of filing a petition for review of said order in the proper Circuit Court of Appeals.

and other sellers an instrument of fraud by means of which the ultimate consumer may be misled and competitors injured thereby.

A stipulation as to the facts was agreed upon and filed with the Commission. Findings were made in conformity with the stipulation.

Respondent was ordered to cease and desist selling cans or cases of gasoline in export trade, marked as aforesaid or unmarked, unless they are filled to standard capacity or, if they contain less than such standard capacity, such cans and cases are to be plainly and conspicuously marked as to the exact liquid contents thereof. Respondent has filed a report with the Commission stating that it is complying with the order.

MISREPRESENTATION IN ADVERTISING MOTION PICTURES

Congo Pictures, Ltd. et al., Hollywood, Calif.—In April 1931 the Commission issued a complaint charging misrepresentation in the advertising of a motion picture entitled "Ingagi."

It was alleged that in the advertising material distributed for use by theaters in exploiting the picture, and in the sound lecture describing the film, false and misleading statements were made to the effect that it was an authentic African picture taken by a famous explorer and depicted his experiences in Africa, when in fact there was no such exploration as described and the explorer was a fictitious person.

Other misrepresentations regarding various scenes in the picture were likewise charged in the complaint. An answer was filed by the respondents. An agreed statement of facts was entered into between the Commission and the respondents in lieu of taking testimony. Upon this agreed statement of facts the Commission issued its findings as to the facts and order to cease and desist.

The Commission found that while some of the scenes in the film were obtained from authentic scenes of African exploration and travel which the respondents purchased from film libraries, most of the scenes were taken in and about the city of Los Angeles; that the leader of the expedition and one of the principal members were fictitious persons. and that no such expedition ever took place; that the lion shown in the film as attacking the cameraman was a trained lion in Hollywood; that many trees in the scenes purported to be growing in Africa were California trees and not found in Africa; that the strange animal alleged to be new to science was in fact a turtle with artificial wings and scales glued to it; that many animals represented to be seen in Africa were animals never found in that country; that the pigmies shown in the film were negro children photographed in Los Angeles; that the native woman shown as being sacrificed to the gorilla was a negro woman living in Los Angeles; that most of the other so-called "natives" were in fact negroes living in and about Hollywood made up for the purposes of the picture.

The Commission issued an order against the respondents prohibiting them from representing in advertising or in motion-picture film—

(1) That any motion-picture film is a true and authentic record of expedition in Africa or any other country unless the scenes were actually made in such country; (2) that all the scenes included in a motion-picture film of travel were pictures actually taken in that country, when such is not the fact; (3) that a picture is a true and accurate representation of habits and customs of races and tribes, when such pictures are entirely fictional; (4) that the scenes incorporated in a motion-picture film depict actual and true happenings in foreign countries or among foreign people when in fact such scenes are entirely fictional; (5) that a motion-picture film containing unusual and strange creatures, events and happenings is a true, actual, and authentic representation of such creatures, events, and happenings when in fact some or all of such scenes are fictional; (6) that a motion-picture film, or oral statement accompanying the presentation of such film, was made by certain named persons when in fact no such persons existed; and numerous other specific prohibitions.

SELLING SECOND-HAND GOODS AS NEW

Made-over hat cases.—On January 19, 1931, the Commission issued complaints against 10 individuals, partnerships, and corporations in New York City, charging them with unfair methods of competition in interstate commerce in the sale of men's made-over felt hats without any mark or other indication to show that the hats were not new hats.

The complaints in general alleged that the respondents bought old, second-hand, used, and discarded men's felt hats and after thoroughly drycleaning them, steamed, ironed, and shaped them, fitted them with new linings, ribbons, sweat leathers, and size labels, and sold them to jobbers, who in turn sold them to retail dealers for resale to the public. It was further alleged that the linings bore various trade names and designs which indicated they were new hats, and that the general appearance of the hats was such that it was impossible for the purchasing public to distinguish the hats from new hats.

One of the respondents was out of business before the commission's complaint could be served upon him. The other nine respondents made answer generally denying the charges of the complaints and contesting the proceedings.

The cases were tried as a group. Testimony was taken in New York City; Richmond, Va.; Orlando, Fla.; Thomasville, Ga.; Knoxville and Chattanooga, Tenn.; Atlanta, Ga.; Asheville, N.C.; and Philadelphia, Pa.

The testimony showed that the respondents bought men's old, discarded, dirty, and greasy felt hats from junk dealers, peddlers, salvage companies, and in some cases from retail stores where purchasers of new hats left the old ones, and had the hats stripped of their trimmings and thoroughly dry cleaned. They then steamed, ironed, pounced, and lined the hats in the same manner as new hats were treated in the course of manufacture. Respondents purchased rayon and silk linings, ribbons and leather sweatbands from dealers in those articles and retrimmed the hats. It developed that all of the linings bore various trade names and designs, such as "Felts De Lux—Custom Made—Mark of Quality;" "Supreme Quality—Made in U.S.A.—Distinctive Headwear—Styled in New York;" "Quality Supreme—Finest American Make;" "Select Quality—Recognized Standard of Excellence;" "Superior Quality—Distinctive Styles—Made by Expert Craftsmen for Fine Trade;" etc. Linings used in new hats always bear various names and designs. Respondents always had the leather sweatbands used by them stamped with the same name as that on the linings.

The made-over hats fashioned by respondents do not bear any word or words, or any other mark, to advise purchasers that they are not new hats. They have all the appearance of new hats and a number of witnesses, including new-hat manufacturers, jobbers, and retail store owners and managers were unable to tell the difference between the made-over hats and new hats.

Respondents sell the made-over hats to jobbers, who in turn sell them to retail dealers for resale to the public. The testimony showed that the jobbers do not always advise retail dealers that the hats are not new and that some retail dealers had bought them believing them to be new hats. Retail dealers in selling the hats to the public do not advise customers that they are made-over hats, but sell them in the same way as they do new hats.

The Commission issued an order prohibiting respondents from selling or offering for sale old, worn, used, and discarded men's felt hats which have been cleaned and fitted with new trimmings, unless and until there is stamped upon, affixed, or attached to the hats in a conspicuous place a word or words clearly indicating that the hats are not new hats, but are used and worn hats which have been cleaned and made over.

One of the respondents, Morris Hochberg and David Hochberg, copartners doing business under the firm name and style of Grand Hat Co., was further charged in the complaint with representing certain made-over hats sold by them to be originally manufactured by John B. Stetson Co., Philadelphia, well-known manufacturers of high quality hats, when in fact many of such hats were not made by the John B. Stetson Co. The testimony showed that the respondents

did in fact sell many hats which they represented as being manufactured by the Stetson Co., when in fact they were not made by that company, and the Commission ordered respondents to cease and desist from such misrepresentation in the future.

SUBSCRIPTION BOOK COMPANIES

Perpetual Encyclopedia Corporation, North American Publishing Co., Inc., Source Research Council, Frank J. Mackey, H. F. McGee, Edmund P. Rucker, Warren T. Davis, et al., Chicago.—The Commission issued a complaint in 1925 against Perpetual Encyclopedia Corporation, North American Publishing Co., Inc., Frank J. Mackey, Edmund P. Rucker, Walter H. Gorham, and other individuals and officers of the corporations charging them with many misrepresentations in connection with the sale of a set of books known variously as "Home and School Reference Work," "Source Book," and "American Reference Library."

Many allegations of misrepresentation were made in the complaint, among them being charges that respondents published and sold the same encyclopedia under three different names at the same time; that they represented by agents and circular letters that the books would be given away free to certain selected persons in the community provided they paid for a loose-leaf extension service over a period of 10 years, or gave a letter of endorsement; that more than 125 leading statesmen, public men, and educators contributed articles to the encyclopedia; that the said statesmen, public men, and educators were on an editorial staff to answer questions sent in by subscribers; that the loose-leaf extension service was included in the price of the books, when in fact an extra charge was made for the semiannual issues; that the books were being sold at a special price in advance of the regular sales campaign when it would sell for more than $200; that the loose-leaf extension service could be paid for over a period of 10 years, when in fact it had to be paid in 1 year; that the encyclopedia was new and up-to-date; and many other false statements made by salesmen in accordance with written sales talks furnished them by respondents. There were also charges of misleading practices in connection with the obtaining of signatures of subscribers to contracts, and in connection with collection methods.

In July 1928 an amended complaint was issued joining as respondents Source Research Council, Inc., Warren T. Davis, president; John J. Hennessey, vice president; Leonard C. Maier, secretary; and Turney T. Culp, treasurer, and charging them with the same misrepresentations in the sale of the Source Book as were charged in connection with the original respondents.

The order to cease and desist is too long to give in detail, but among the practices the Commission found to be unfair and prohibited respondents from continuing were—

Selling or offering for sale, either at wholesale or retail, any encyclopedia or set of books of the same text or content material under more than one name or title at the same time; advertising or representing in any manner that a certain number of sets, or any set of books, offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any purpose, when such is not the fact; advertising or representing in any manner that purchasers are only paying for loose-leaf supplements to keep the books up-to-date, or for services to be rendered by a research bureau, when such is not the fact; requiring purchasers to pay additional money to receive loose-leaf supplements when such supplements were sold to purchasers as part of the contract of purchase of the encyclopedia; advertising or representing in any manner that the encyclopedia is regularly sold at $130, and that at a later date all purchasers will have to pay that price when such is not the fact; using contract forms which have printed on them prices greatly in excess of the prices at which the encylopedia and services are customarily sold, and which do not fully and plainly inform purchasers of all charges to be paid for the encyclopedia and services; advertising or representing in any manner that any person is a contributor, reviewer, or reviser of the encyclopedia unless such person has actually contributed an article, or has actually reviewed or revised an article submitted to him, and has given respondents permission to use his name as a contributor, reviewer, or reviser; advertising or representing in any manner that any persons are members of a consulting staff or research bureau, and will answer questions sent in by subscribers, unless such persons are actually retained by said research bureau for answering questions, and such questions are actually referred to them; advertising or representing in any manner that the encyclopedia was edited and prepared by a society of 200 teachers, when such is not the fact; advertising or representing in any manner that the encylopedia is a recently completed, new, and up-to-date encyclopedia, when such is not the fact; advertising or representing in any manner that the usual and customary selling price of the encyclopedia is higher than the price at which it is being offered to the particular purchaser, when such is not the fact; and many other specific prohibitions.

MISBRANDING PAINT

L. F. Cassoff, doing business under the names and styles of "Central Paint & Varnish Co.", "Central Shellac Works", and "Cumberland Paint Works", Brooklyn.—The respondent, following the issuance of Commission's complaint, waived hearing on the charges set forth in the complaint and consented to the order of the Commission to cease and desist in the violations of law charged in the complaint.

The Commission's order forbids the respondent from advertising paint with the words "Purest Paint, 50 percent White Lead, 50 percent Zinc", or similar phrases when the pigment of such paint is not in fact composed of 50 percent lead and 50 percent zinc. The order also forbids respondent from causing its paint to be advertised, branded, or labeled with the phrases, "100 percent Pure Ready Mixed Paint, Zinc Lead Linseed Oil", or "100 percent Pure Lead and Zinc", or similar phrases, unless in each instance the pigment of such paint is,

in fact, composed wholly of lead and zinc. The order further forbids the respondent from using any statement or representation as to the kind, class, or proportion of ingredients of any of its paint in advertising matter or on labels or containers thereof, except where such statement is true in fact. Respondent has filed a report with the Commission stating that it is complying with the order.

FALSE AND MISLEADING ADVERTISING

Theronoid, Inc., a Delaware corporation, Theronoid Corporation, an Ohio corporation, and Philip Illsley, J. Roy Owens, and J. N. Watson, New York, engaged in the business of offering for sale and selling a device consisting of a coil of wire or solenoid in a container intended to be placed around patients or users whereby, by means of an alternating electric current, an electromagnetic field of alleged therapeutic value was said by respondents to be created to the great benefit of customers using the same. It was claimed by respondents that the use of said device or appliance in the manner aforesaid was a beneficial therapeutic agent in the aid, relief, prevention, or cure of the following diseases, namely: Asthma, arthritis, bladder trouble, bronchitis, catarrh, constipation, diabetes, eczema, heart trouble, hemorrhoids, indigestion, insomnia, lumbago, nervous disorders, neuralgia, neuritis, rheumatism, sciatica, stomach trouble, varicose veins, and high blood pressure.

The complaint alleged that prospective dealers and other purchasers, believing and relying upon the truth of respondents' representations, have been deceived into believing that the use of the device of respondents will be of remedial or therapeutic value in the aid, relief, prevention, or cure of the ailments specified, whereas the convincing and undisputed testimony of many disinterested scientists, eminent in their respective fields of physics, medicine, surgery, biology, physiology, electrotherapy, physiotherapy, etc., supports the conclusion that such belief is false and unwarranted. Respondents denied the allegations of the complaint.

After hearings had been held the Commission issued an order to cease and desist, in which it ordered the several respondents, in connection with the advertising, offering for sale, and sale in interstate commerce of the solenoid belt or device, heretofore known as Theronoid, to cease and desist from representing in any manner whatsoever that the said belt or device or any similar device or appliance designed or intended to operate through exposure of a human subject to a low-frequency alternating magnetic field, without any physical conductive connection of such subject in the circuit, has any physiotherapeutic effect upon such subject, or that it is calculated or likely to aid in the prevention, treatment, or cure of any human ailment, sickness, or disease.

MISREPRESENTING SEED POTATOES

Mahaffey Commission Co., and C. E. Malmin, alias "Northern Agricultural Institute", Chicago, engaged as a commission merchant in the sale and distribution of seed potatoes, purchased by it in carload lots from sellers located in various States and shipped by those sellers from such States to the respondent company at Chicago. Respondent Malmin, designating himself as "Northern Agricultural Institute", upon the instructions of respondent commission company, certified and tagged the said seed potatoes with labels indicating that they had been competently and disinterestedly inspected, and that they were therefore free from "dwarfing", "running out", "mosaic", and any other potato diseases determinable by inspection of the growing seed potato plant, when such was not the fact. The complaint alleged that the aforesaid practices of respondents induced purchasers to purchase the said seed potatoes at prices higher than would have been paid for seed potatoes not inspected and certified in the manner in which they believed respondents' seed potatoes had been inspected or certified. Respondents were charged with other false and misleading representations relating to the quality of their seed potatoes and relating to their methods of doing business. Respondents in their answer admitted that they were engaged in interstate commerce in competition with others, denied all other allegations of the complaint, and waived all further proceedings and voluntarily consented that the Commission might make, enter, and serve upon them an order to cease and desist from the methods of competition alleged in said complaint.

Thereafter, in accordance with the rules of the Commission, an order to cease and desist was issued, without findings as to the facts, in which the respondents were directed, in connection with the sale or offering for sale in interstate commerce of seed potatoes, to cease and desist from representing directly or by implication that inspection or certification by the respondent, C. E. Malmin, is certification or inspection by the "Northern" or any other "agricultural institute" and that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case. Respondents have filed a report with the Commission stating that they are complying with the order.

FALSE AND MISLEADING REPRESENTATIONS—GROCERY BUSINESS

Menke Grocery Co., Kansas City, Mo., engaged in selling groceries, stock powders, and other merchandise at retail upon orders obtained by house-to-house canvasses and by mail to purchasers thereof situated in the States of Illinois, Iowa, Missouri, Kansas, Nebraska, Colorado, Wyoming, and other States of the United States.

The Commission charged the company with representing its business as wholesale when it was in fact retail, with representing that it was doing business under the license and approval of the United States Government when such was not the fact, and with various and sundry other misrepresentations as to the articles sold by it and its methods of doing business. Respondent entered a general denial to the allegations of the complaint.

After hearings had been held, the Commission issued an order to cease and desist in which the respondent, in connection with the selling or offering for sale of its merchandise in interstate commerce, was directed to cease and desist from using in its letterheads, billheads, and other trade literature the legend "United States Food Administration, License G-30152", or in any other manner representing to the public that it operates under the license or approval of the United States Government; from representing on its letterheads and other trade literature, or through its agents, or in any other manner that it operates a wholesale grocery, or is a wholesale grocer; from selling any of its merchandise on promise or guaranties of satisfaction to the customer and that it will return the purchase price on the return of goods as to which the customer is dissatisfied, then not fulfilling such guaranties and promises; from promising, either expressly or impliedly, prompt shipment of merchandise purchased unless and until respondent, by regular course of business, shall make such prompt shipment; from shipping merchandise that is inferior to samples shown the prospective buyers or which substantially differs from the description of the merchandise sold by its agents; from misrepresenting in any manner the effectiveness of the stock and chicken powders or remedies; and from representing that any of its stock or chicken powders or remedies are sold on trial with the privilege of the buyer to return the merchandise if dissatisfied, and to receive back the price thereof, unless and until the respondent, in the regular course of business, shall return the purchase price upon the return by the customer of the merchandise purchased. Respondent has filed a report with the Commission stating that it is complying with the order.

MISDESCRIPTION OF BUSINESS

Rochester Nurseries, Inc., Rochester, N.Y., engaged in the business of selling and distributing nursery stock, such as fruit trees, ornamental shrubbery, etc., in a number of States of the Union, was charged in the complaint with representing itself as a nursery of long experience, propagating and growing its own stock, when in fact it was merely a jobber, purchasing the stock sold by it from a local nursery which it neither owned nor controlled and in which it had no substantial interest.

Respondent entered a general denial to the allegations of the complaint, and after the taking of testimony on both sides the Commission issued its findings of fact in which it found that the respondent made the representations alleged and that during the period when said representations were made it was a small concern with but $1,000 capital, owning no nursery, growing no stock, and wholly without equipment mentioned or implied in the advertisements circulated as inducements to customers and prospective customers in the sale of said nursery stock. The Commission further found that respondent was merely a sales organization or jobbing concern which purchased nursery stock from a bona fide nurseryman and sold it to retail customers. It was also found that among the competitors of respondent were a number of concerns who were growers of the nursery stock sold by them in competition with respondent, and that permanence, stability, and responsibility on the part of sellers of nursery stock are of peculiar importance to their customers as it is often a number of years after sale before the stock purchased bears fruit so as to disclose whether or not the stock is as represented.

It was also found that the use of the word "nurseries" in the corporate name of respondent, taken in connection with statements made in its literature used as an inducement in the sale of said nursery products, had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent actually grew or propagated the nursery products sold and distributed by it in the several States of the Union and that it owned, operated, and controlled nurseries and farms on which the said nursery products sold and distributed by it were grown.

Upon the conclusion that the acts and practices of respondent were to the prejudice of the public and respondent's competitors and constituted unfair methods of competition in violation of the statute, the Commission issued its order directing respondent, in connection with the advertising, offering for sale, and sale in interstate commerce of nursery stock, to cease and desist from directly or indirectly using the word "nurseries" or "nursery" or any other word or words of like import in its corporate or trade name, business signs, or advertising matter in combination or conjunction with any word or words unless and until said respondent actually owns or operates, or directly and absolutely controls a nursery or farm in or on which a substantial proportion of nursery stock sold and distributed by it in interstate commerce is grown. Respondent has filed a report with the Commission stating that it is complying with the order.

MISDESCRIPTION OF PRODUCT

Bulova Watch Co., New York.—The order to cease and desist in this case was issued without findings as to the facts in accordance

with the rules of the Commission, and it directs the respondent, in connection with or in the course of the sale or distribution of watches in interstate commerce, to cease and desist from representing that its watches contain a designated number of jewels, such as "Seventeen 17 Jewels" or "Nineteen 19 Jewels" or "Twenty-one 21 Jewels" or any other designated number of jewels, unless said watches actually contain the stated number of jewels, each and every one of which jewels serves a mechanical purpose as a frictional bearing; and from representing that its said watches are "adjusted" or "adj." so as to import or imply that the said watches have been adjusted to heat, cold, isochronism, and position unless said watches have actually been adjusted by respondent to heat, cold, isochronism, and position as the term "adjusted" or its abbreviation "adj." is generally understood in the watchmaking industry and by the purchasing public. Respondent has filed a report with the Commission stating that it is complying with the order.

MISREPRESENTING MEDICINES AND APPLIANCES AS RADIUM ACTIVE

Radium-Active Remedies Co., Pittsburgh, a corporation.—The Commission ordered the company to cease and desist representing that its products, or any of them, cure any diseases of the human body or that said products are radio or radium active unless and until they in fact have radio or radium activity sufficient to have therapeutic effect. It was found that respondent manufactured or prepared and sold medicinal preparations and appliances for the correction of human ailments which it advertised as being "radium active" by reason of a radium-bearing substance contained therein and that such radium active emanations would alleviate or cure various diseased conditions and ailments when in fact such substance was contained in such medicines and appliances in so small an amount as to have no therapeutic effect whatever. Respondent has filed a report with the Commission stating that it is complying with the order.

TYPES OF UNFAIR COMPETITION

PRACTICES CONDEMNED IN ORDERS TO CEASE AND DESIST ARE LISTED

The following partial list shows unfair methods of competition condemned by the Commission from time to time in its orders to cease and desist. (These do not include Clayton Act violations.)[4]

The use of false or misleading advertising, calculated to mislead and deceive the purchasing public, to their damage and to the injury of competitors.

[4] Clayton Act violations under the Commission's jurisdiction include, subject to the various provisions of the statute concerned, price discrimination (see sec. 2 of this report), tying and exclusive contracts or dealings, corporate stock acquisitions (see sec. 7), and interlocking directorates (see sec. 8).

Misbranding of fabrics and other commodities respecting the materials or ingredients of which they are composed, their quality, purity, origin, or source, and selling them under such names and circumstances that the purchaser would be misled in said respects.

Bribing buyers or other employees of customers and prospective customers without the latter's knowledge or consent, to secure or hold patronage.

Procuring the business or trade secrets of competitors by espionage, or by bribing their employees, or by similar means.

Inducing employees of competitors to violate their contracts or enticing away employees of competitors in such numbers or under such circumstances as to hamper or embarrass said competitors in the conduct of their business.

Making false and disparaging statements respecting competitors' products, their business, financial credit, etc.

Widespread threats to the trade of suits for patent infringement arising from the sale of alleged infringing products of competitors, such threats not being made in good faith but for the purpose of intimidating the trade and hindering or stifling competition. Trade boycotts or combinations of traders to prevent certain wholesale or retail dealers or certain classes of such dealers from procuring goods at the same terms accorded to the boycotters or conspirators, or to coerce the trade policy of their competitors or of manufacturers from whom they buy.

Passing off goods or articles for well and favorably known products of competitors through appropriation or simulation of such competitors' trade names, labels, dress of goods, etc., with the capacity and tendency unfairly to divert trade from said competitors, and/or with the effect of so doing to their prejudice and injury and that of the public.

Selling rebuilt, secondhand, renovated, or old products, or articles made from used or secondhand material as and for new.

Paying excessive prices for supplies for the purpose of buying up same and hampering or eliminating competition.

Using concealed subsidiaries, ostensibly independent, to secure competitive business otherwise unavailable.

Using merchandising schemes based on a lot or chance.

Cooperative schemes and prices for compelling wholesalers and retailers to maintain resale prices fixed by the manufacturer for resale of his product.

Combinations or agreements of competitors to enhance prices, maintain prices, bring about substantial uniformity in prices, or to divide territory or business, to cut off competitors' sources of supply or to close markets to competitors, or otherwise restrain or hinder free and fair competition.

Various schemes to create the impression in the mind of the prospective customer that he is being offered an opportunity to make a purchase under unusually favorable conditions when such is not the case, with capacity and tendency to mislead and deceive many of the purchasing public into buying products involved in such erroneous belief, and/or with the effect so to do, to the injury and prejudice of the public and of competitors; such schemes including—

(1) Sales plans in which the seller's usual price is falsely represented as a special reduced price made available on some pretext for a limited time or to a limited class only.

(2) The use of the "free" goods or service device to create the false impression that something is actually being thrown in without charge, when, as a matter of fact, fully covered by the amount exacted in the transaction taken as a whole.

(3) Use of misleading trade names calculated to create the impression that a dealer is a manufacturer selling directly to the consumer with corresponding savings.

(4) Use of pretended exaggerated retail prices in connection with or upon the containers of commodities intended to be sold as bargains at lower figures.

Subsidizing public officials or employees through employing them or their relatives under such circumstances as to enlist their interests in situations in which they will be called upon by virtue of their official position to act officially, making unauthorized changes in proposed municipal bond issues, corrupting public officials or employees and forging their signatures, and using numerous other grossly fraudulent, coercive, and oppressive practices in dealing with small municipalities.

Imitating or using standard containers customarily associated in the mind of the general purchasing public with standard weights or quantities of the product therein contained, to sell to said public such commodity in weights or quantities less than the aforementioned standards, with capacity and tendency to deceive the purchasing public into believing that they are purchasing the quantities generally associated with the standard containers involved, and/or with the effect of so doing, and with tendency to divert trade from and otherwise injure the business of competitors who do not indulge in such practices and/or with the effect of so doing, to the injury of such competitors and to the prejudice of the public.

Concealing business identity in connection with the marketing of one's product, or misrepresenting the seller's relation to others, e. g , claiming falsely to be the agent or employee of some other concern or failing to disclose the termination of such a relationship in soliciting customers of such concerns, etc.

Misrepresenting in various ways the advantages to the prospective customer of dealing with the seller, with the capacity and tendency to mislead and deceive many among the consuming public into dealing with the person or concern so misrepresenting, in reliance upon such

supposed advantages and to induce their purchases thereby, and/or with the effect of so doing, to the injury and prejudice of the public and of competitors; such as—

(1) Seller's alleged advantages of location or size.

(2) False claims of being the authorized distributor of some concern.

(3) Alleged indorsement of the concern or product by the Government or by nationally known businesses.

(4) False claim by a dealer in domestic products of being an importer, or by a dealer of being a manufacturer, or by a manufacturer of some product, of being also the manufacturer of the raw material entering into said product.

(5) Being manufacturer's representative and outlet for surplus stock sold at a sacrifice, etc.

(6) Representing that the seller is a wholesale dealer, grower, producer, or manufacturer, when in fact such representation is false.

Use by business concerns associated as trade organizations or otherwise of methods which result or are calculated to result in the observance of uniform prices or practices for the products dealt in by them, with consequent restraint or elimination of competition, such as use of various kinds of so-called standard cost systems, price lists or guides, exchange of trade information, etc.

Securing business through undertakings not carried out and through dishonest and oppressive devices calculated to entrap and coerce the customer or prospective customer, with the result of deceiving the purchasing public and inducing purchases by many thereof, and of diverting and tending to divert trade from competitors who do not engage in such false, misleading, and fraudulent representations, all to the prejudice and injury of the public and competitors; such kind of practices, including—

(1) Securing by deceit prospective customer's signature to a contract and promissory note represented as simply an order on approval; securing agents to distribute the seller's products through promising to refund the money paid by them should the product prove unsatisfactory; and through other undertakings not carried out.

(2) Securing business by advertising a "free trial" offer proposition, when, as a matter of fact, only a "money-back" opportunity is offered the prospective customer.

Giving products misleading names so as to give them a value to the purchasing public or to a part thereof which they would not otherwise possess, with the capacity and tendency to mislead the public into purchasing the products concerned in the erroneous beliefs thereby induced, and with the tendency to divert and/or with the effect of diverting business from and otherwise injuring and prejudicing competitors who do not engage in such practices, all to the prejudice of the public and of competitors, such as—

(1) Names implying falsely that the particular products so named were made for the Government or in accordance with its specifications and of corre-

sponding quality, or are connected with it in some way, or in some way have been passed upon, inspected, underwritten, or indorsed by it; or

(2) That they are composed in whole or in part of ingredients or materials, respectively, contained only to a limited extent or not at all; or

(3) That they were made in or came from some locality famous for the quality of such products; or

(4) That they were made by some well and favorably known process, when, as a matter of fact, only made in imitation of and by a substitute for such process; or

(5) That they have been inspected, passed, or approved after meeting the tests of some official organization charged with the duty of making such tests expertly disinterestedly or giving such approval; or

(6) That they were made under conditions or circumstances considered of importance by a substantial part of the general purchasing public, etc.

Selling below cost, with the intent and effect of hindering, stifling, and suppressing competition.

Dealing unfairly and dishonestly with foreign purchasers and thereby discrediting American exporters generally, with effect of bringing discredit and loss of business to all manufacturers and business concerns engaged in and/or seeking to engage in export trade, and with the capacity and tendency so to do, to the injury and prejudice of the public and of said offending concerns' export-trade competitors.

Coercing and enforcing uneconomic and monopolistic reciprocal dealing.

Falsely representing that a moving picture is a pictorial record of an expedition in a foreign country and a depiction of travel therein showing true happenings, peoples, customs, and animal life.

COURT CASES

MATTERS IN WHICH ACTION WAS TAKEN ARE PRESENTED

The number of court proceedings in which the Federal Trade Commission has been a party during the year, as well as a cumulative showing of this work throughout the Commission's life, will be found in the statistical tables on pages 109 to 111 of this report.

Cases pending in the Federal courts during the year, in connection with which action was taken, are described as follows in alphabetical order: [5]

The Arrow-Hart & Hegeman Electric Co., Hartford, Conn.—This corporation, September 29, 1932, filed with the Second Circuit (New York City) its petition to review and set aside the Commission's order, which was based on findings to the effect that, by the acquisition of the stock of two competing concerns, its predecessor (Arrow-Hart & Hegeman, Inc.) had lessened competition between them, and created a situation where there was a tendency to restrain commerce and create a monopoly in the sale of electrical-wiring devices, in violation of section 7 of the Clayton Act.

[5] United States circuit courts of appeals are designated first circuit, second circuit, etc.

The order directed the Arrow-Hart & Hegeman Electric Co. to divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Co. acquired by it as a result of the merger of the Hart & Hegeman Manufacturing Co. and Arrow Electric Co., the Arrow Manufacturing Co., and the H. & H. Electric Co., so as to include in such divestment the Hart & Hegeman Manufacturing Co.'s manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of the Hart & Hegeman Manufacturing Co.; or to divest itself absolutely, in good faith, of all the common stock of the Arrow Electric Co. acquired by it as a result of the merger of the Hart & Hegeman Manufacturing Co., Arrow Electric Co., the Arrow Manufacturing Co., and the H. & H. Electric Co., so as to include in such divestment the Arrow Electric Co.'s manufacturing plants and all other property necessary to the conduct and operation thereof as a complete going concern, and so as neither directly nor indirectly, to retain any of the fruits of the acquisition of the common stock of the Arrow Electric Co.

It was further ordered that the Arrow-Hart & Hegeman Electric Co. divest itself absolutely, in good faith, of the Hart & Hegeman's manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern; or divest itself absolutely, in good faith, of the Arrow Electric Co.'s manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern; and that such divestment of the common stock or assets of the Arrow Electric Co. or Hart & Hegeman Manufacturing Co., as the case may be, "shall not be made directly nor indirectly to the said the Arrow-Hart & Hegeman Electric Co. or to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control of the said the Arrow-Hart & Hegeman Electric Co."

The court, January 30, 1933, granted the motion of the Commission for an order striking, from the petition for review, references to and quotations from the report of the Commission's trial examiner, at the same time denying the motion of the Electric Co. for an order requiring the Commission to certify to the court, as a part of the record on appeal, the said trial examiner's report and the company's exceptions thereto (63 F. (2d) 108):

The case was argued on the merits April 11, and, on May 29, the Second Circuit handed down its decision affirming the Commission's order (65 F. (2d) 336). The court, speaking through Circuit Judge Manton, said:

> Congress intended to prevent, by section 7, a corporate control which could be concentrated by prohibited acquisition of stock. Wrongful acquisition of the

stock facilitates a merger or consolidation of assets. When ordered to divest itself of stock, the utmost good faith should be used by a corporation in order to remove as far as possible the corporate concentration of ownership caused by the wrongful acquisition of stock.

* * * * * * *

Divestiture of stock must be actual and complete and may not be effected by using the control resulting therefrom to secure title to the possessions of the competing companies' property. The purpose to be attained is to avoid the possibility of permitting consolidation or merger which substantially lessens competition in trade by the use of the stock held in merged ownership. * * * The control which Arrow-Hart & Hegeman, Inc., was able to and did exercise by ownership of the common stock even though there was outstanding in preferred stock 72 percent of the par value of the manufacturing companies' total stock issued, is a clear example of unlawful stock control providing the effect has been to substantially lessen competition.

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Competition connotes more than mere rivalry between salesmen selling different brands of products of the same quality, at the same price, and manufactured by the same company.

As has been often announced, the purpose of the provisions of the Clayton Act is to reach unlawful agreements in their incipiency. *Standard Fashion Co.* v. *Magrane Houston Co.*, 258 U.S. 346. In *International Shoe Co.* v. *Federal Trade Commission* (280 U.S. 291), the Supreme Court required evidence of substantial competition in fact, in order that there may be established an effect upon the public interest and said:

"Obviously, such acquisition will not produce the forbidden result if there be no preexisting substantial competition to be affected; for the public interest is not concerned in the lessening of competition, which to begin with, is itself without real substance."

The converse is true and if there is real substance in the competition the public interest is affected. In that case, only 5 percent of the commodities produced by each company were competitive, while in the instant case 59 percent by volume of sales of Hart & Hegeman Mfg. Co.'s products competed with Arrow Electric Co. products.

Judge Swan dissented on the ground that the Commission's order exceeded its jurisdiction.

The company has indicated its intention of applying to the Supreme Court for a writ of certiorari.

Artloom Rug Mills, Philadelphia.—The Commission, December 23, 1932, filed with the Third Circuit (Philadelphia), an application for the enforcement of its order in this case.

The respondent, a Pennsylvania corporation, was charged with misbranding certain of its floor coverings as "Wilton" rugs. The Commission's order, which was based on findings supported by testimony, required the respondent, among other things, to cease and desist from, directly or indirectly:

Using the word "Wilton" in describing, designating, or labeling any rug fabric on the surface of which is displayed a design or pattern in two or more colors, which is of the same weave construction as the "Bagdad Seamless Jacquard Wilton" rug fabric now manufactured by respondent, or which is of a weave construction in which the warp pile yarns, when not required at the surface for

the said design or pattern, are not continued in the subsurface structure of the fabric.

The company, March 31, 1933, filed its answer to the application for enforcement; and on April 11, the Commission moved to strike portions of this answer. Argument on the motion was postponed until final argument on the merits, which was had May 4. Respondent's brief was filed April 29. At the close of the fiscal year the case was awaiting decision.

Brown Fence & Wire Co., Cleveland.—This corporation, August 18, 1932, filed with the Sixth Circuit (Cincinnati) its petition praying that the court review and set aside the two paragraphs of the Commission's order outstanding against it, which were based on findings to the effect that the company—which, generally speaking, is but a middleman making a profit in the resale of merchandise purchased by it from various manufacturers—in its advertisements and catalogs, stresses alleged savings to be effected by purchasing directly from the manufacturer and the consequent elimination of the middleman's profit; and that, on this account, its representations have a tendency and capacity to mislead and deceive the purchasing public and injure competitors not following the same practice.

After argument on the merits March 14, the Sixth Circuit, May 9, 1933, decided the case in favor of the Commission (64 F. (2d) 934). Pertinent excerpts from the opinion follow:

> The petitioner offered to prove that the phrases "Factory prices", "Direct from factory", and "From factory to you" are commonly used in the mail-order business, but the petitioner itself goes far beyond this. Assuming for the moment that there is no implication in such phrases that the factory referred to is one owned, operated, and controlled by the petitioner, other statements in the catalog leave no room for doubt as to the meaning conveyed.
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> It also sufficiently appears that the proceding was in the interest of the public. Whatever may have been our previous understanding of the line of demarcation between methods of trade which result at most of a private wrong and those in which there is specific and substantial public interest (which led to our decision in *Royal Milling Co.* v. *Federal Trade Commission*, 58 Fed. (2d) 581), any misapprehension we may have entertained of the exclusive character of the tests to be applied thereto enumerated in *Federal Trade Commission* v. *Klesner*, 280 U.S. 19, has now been dispelled by the decision in *Federal Trade Commission* v. *Royal Milling Co. et al.*, 288 U.S. 212, decided February 6, 1933. The language of the Supreme Court in that case is peculiarly applicable here: "If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article or one equally as good but having a different origin."

Electric Bond & Share Co., New York.—The Commission, December 1, 1928, filed in the District Court of the United States for the Southern District of New York its application for an order requiring certain officers and employees of this company to produce certain

records and answer certain questions incident to the investigation being conducted by the Commission pursuant to Senate Resolution 83, directing the Commission to investigate and report upon the financial and business structure of the electric power and gas industry, the policies and practices of holding companies and their affiliated companies, their alleged efforts to control public opinion on account of public or municipal ownership, and whether any of the conditions disclosed constituted a violation of the antitrust laws.

The objections raised by counsel for the company to administering the oath and interrogation of the witnesses put in issue the fundamental question of the Commission's power to issue subpenas in the investigation directed by the Senate, whether the Electric Bond & Share Co. was engaged in interstate commerce, and whether the attempt to subpena the records was a violation of the constitutional prohibition of unreasonable search and seizure.

The court, July 18, 1929, handed down its opinion (34 F. (2d) 323). Briefly, the objections of the company to the Commission's subpenas duces tecum were sustained, and those that were interposed to the pertinent and competent questions propounded to the individual witnesses by counsel for the Commission were overruled. The court assumed that the company, in part, at least, was engaged in interstate commerce, saying, in this connection:

> If respondents wish to contest the propriety of this assumption, the matter will have to go to a master; or, if petitioner (Federal Trade Commission) wishes an adjudication to the effect that the *intra*state business of the Electric Bond & Share Co. is so intimately associated and connected with interstate commerce that all the company's activities are subject to the jurisdiction of the Commission a reference will be required to establish the fact.

Both parties, desiring to take advantage of the opportunity thus afforded by the court, agreed to the appointment of a master.

However, the parties came to an agreement upon the facts; a stipulation to this effect was signed October 28, 1931. The case was argued on its merits January 21, 1932, and decided August 19, 1932, (1 Fed. Supp. 247).

After discussing the previous decision, the court refers to the matter of subpenas duces tecum in the following language:

> At the outset, notice should be taken that petitioner once more urges me to uphold the duces tecum subpenas heretofore considered. That issue has gone against petitioner, and whatever inferences are here to be drawn from facts not previously before the court, they cannot, retroactively, give vigor to process already found to have been without vitality.

The court then proceeds to an analysis of the relationships existing between the company and its subsidiaries, concluding—

> that, in handling transactions of great volume and high value, Electric Bond & Share Co. was a ruling agent and actively participated in the interstate movement of commerce.

It then demonstrates, by citations to decisions of the Supreme Court of the United States, the error of the company's contentions, summarizing the situation in these words:

At this point, note should be taken of the fact that, in the cases just discussed, the Congress had not specifically undertaken to exercise supervision or control over the matters which were there under review. Nevertheless, the Supreme Court believed them to be within the protection of the commerce clause of the Constitution. In the case at bar, the Congress has taken a step of affirmative character, even though it has not yet chosen definitely to regulate holding companies which, through intercorporate networks, control the destinies of subsidiary operating companies doing interstate business. In other words, it has enacted section 6a of the Federal Trade Commission statute. Unequivocally, the Federal Trade Commission was vested with power "to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships."

This enactment, at the very least, requires a conclusion that a corporation whose activities are such as to give it the protection of the commerce clause under the decisions set forth above, should not be held to be beyond the reach of the Commission's authority.

Continuing, the court says:

But, say respondents, since the jurisdiction of the Commission is limited to interstate commerce, the intrastate business and affairs of Electric Bond & Share Co. are outside of the Commission's authority, even though concession should be made that the company, as to some matters, engaged in interstate trade. If intrastate trade could definitely be separated from that which is interstate, I should agree. For example, if the company charged its subsidiaries a specified fee for services rendered in connection with the purchase of apparatus and materials, it might well be that the investigation of the Commission should be limited to inquiries relevant to the reasonableness of such charges as were made upon this account. Such, however, is not the method of operation. The parent company makes a blanket charge for substantially all of its services, and this is based upon certain percentages of the gross earnings of the subsidiaries. The reasonableness of this charge cannot be ascertained merely by inquiring into the cost of rendering the purchasing services. The cost of rendering other services for which a fee is charged must also be determined, because they are inextricably involved with the cost of work having to do with interstate activity.

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It follows that the commerce power, in the exercise of which Congress enacted the Federal Trade Commission Act, is indubitably broad enough to comprehend the acts of respondent which have been shown to affect interstate commerce and, in the light of the foregoing decisions, it would seem clear that respondent is "engaged in commerce" within the meaning of that act.

The manner in which the affairs of the operating companies having to do with interstate commerce are affected by Electric Bond & Share Co., as well as its own activities in the purchase and shipment of materials and equipment in interstate commerce, are quite sufficient to bring respondent within the investigatory authority of the Federal Trade Commission.

Accordingly, an order will be entered directing the individual respondents to answer all questions relating to the cost to Electric Bond & Share Co. of such

services as it renders the operating companies in return for the payment of a fee based upon their gross earnings; to the cost of rendering purchasing services which result in interstate movements of materials, apparatus, and supplies to or from any of its subsidiaries, for which a separate fee is charged; and to the cost of rendering any service to subsidiary companies engaged in the interstate transmission of electricity or gas, for which a separate fee is charged.

Since the decision, pursuant to an agreement with the company, accountants of the Commission have been conducting an examination of its records and vouchers, for the purpose of determining the cost to the company of rendering certain services to its subsidiary, affiliated, or associated companies in return for which a fee is paid, and for the purpose of learning other pertinent facts in connection therewith.

Everitt & Graf, Milwaukee.—The Commission, June 15, 1931, filed with the Seventh Circuit (Chicago) an application for the enforcement of its order in this case, which directed the respondent, a Wisconsin corporation, with its factory and principal place of business situated in Milwaukee, to cease and desist—

from using, directly or indirectly, the word "California" in trade marks, labels, or brands stamped on linings of women's hats or containers in which said hats are sold, offered for sale, delivered, or shipped in interstate commerce, and/or advertising or representing, either directly or indirectly, by causing retail dealer, customers to so advertise or represent, either on display cards, counter cards, advertisements inserted in newspapers, trade and fashion magazines, or in any other manner advertising, representing, or designating its said hats as being manufactured in California unless and until said hats are actually manufactured in the State of California.

The findings were to the effect that respondent sold its Wisconsin-made hats (in competition with a large number of manufacturers of women's hats situated in California, and selling their product under the name of "California Sports Hat") under the trade name and style of "California Sport Hat."

Subsequent to the filing of the application for enforcement, Everitt & Graf filed with the Commission a supplemental report, which the commission accepted as being in compliance with its order, conditional on further information as to continued compliance. As a result of this step the court, February 6, 1932, on joint petition of the parties, suspended proceedings for the time being. A supplemental investigation having shown respondent's good faith in complying with the order, the Commission, on July 8, 1932, withdrew its application for enforcement, without prejudice.

Hoboken White Lead & Color Works, Hoboken, N.J.—The Commission, October 19, 1932, filed with the second circuit (New York City) an application for a rule to show cause why this concern should not be adjudged in contempt of court and punished accordingly for violation of the court's decree of January 19, 1931, which was directed against the use of the term "White Lead," or words of like import, in

labeling, advertising, or describing paint products containing less than 50 percent of white lead, lead carbonate, or lead sulphate, etc.

The order to show cause was signed by the court, and the case set for hearing November 7. On the latter date, at the instance of counsel for the respondent, the matter was postponed for the purpose of affording an opportunity for disposition without argument.

Efforts to dispose of the case without litigation having proved futile, hearing will be had at the forthcoming October term upon the rule to show cause and respondent's answer thereto.

E. Griffiths, Hughes (Inc.), Rochester, N.Y.—The Supreme Court of the District of Columbia, January 13, 1932, at the instance of this corporation, issued a rule on the Commission to show cause (1) why it should not be restrained temporarily from further making public its complaint in this matter; (2) why it should not be restrained temporarily from taking in public any testimony in connection with its complaint, or making public the transcript of such testimony; and why (3) it should not be enjoined perpetually from making public the contents of its complaint or the transcript of testimony adduced in the trial of the case—until such time as the issues are finally determined—the basis for the proceeding being the claim that the publicity incident to the trial of the case would result in irreparable loss and damage to its business.

The Commission, January 25, filed its return to the rule, answer to the complaint, and motion to dismiss the complaint, and the matter was presented orally to the court that day.

The Commission's complaint charged that this concern, engaged in the sale of proprietary preparations known as "Kruschen Salts" and "Radox Bath Salts", was falsely representing that its Kruschen Salts was a cure or remedy for obesity, and that its Radox Bath Salts, when used in the bath and as otherwise directed, radiated oxygen in great quantities and sufficiently to produce an invigorating and energizing effect. The respondent denied these charges.

The Supreme Court of the District entered its final decree dismissing the bill, February 11, 1932. The corporation noted an appeal in open court, and the appeal was docketed with the Court of Appeals March 15. The next day the corporation filed a petition for temporary injunction. On March 18, the Commission filed a motion to dismiss the petition and, on March 19, the petition was denied. The case was argued January 10–11, 1933, and decided in favor of the Commission on January 30 (63 F. (2d) 362).

In affirming the decree of the Supreme Court of the District of Columbia (February 11, 1932), the Court of Appeals, through Mr. Justice Groner, said:

> More than 12 years ago the Commission adopted a rule that all hearings before it, or its examiners, on formal complaint should be public hearings, and another rule of later date that after complaint issued the papers in the case shall be open

to the public for inspection under such rules and regulations as the secretary of the Commission may prescribe. Both rules are in line with the theory that a competitor has the right to intervene, and this in itself is inconsistent with the idea of secrecy. But without regard to this, the Commission is authorized by the act to adopt such rules not inconsistent with law as may be necessary in carrying out the act; and we have uniformly held that a regulation adopted under these circumstances has the force of law, and much more is this true where the rule is one of long standing * * *. The rule of the board is therefore wholly consonant with the modern view of functions of government.

Inecto, Inc., New York City.—On June 15, 1933, the Commission filed with the Second Circuit (New York City) an application for the enforcement of its order in this case.

The Commission's complaint alleged that respondent, in the manufacture, sale, and distribution in interstate commerce of its hair dye under the name of "Inecto Rapid Notox", made certain false and misleading statements and misrepresentations concerning its nature, properties, and characteristics, including, among others, numerous false and misleading statements to the effect that the product was safe and harmless, and, when applied, produced no harmful or deleterious effects. After respondent had filed answer, testimony was taken before a trial examiner, and the Commission, having made its findings as to the facts, issued the order which is the basis of the present proceeding, and which, among other things, directed the corporation to cease and desist, in connection with the sale or distribution of its said hair dye—(a) from directly or indirectly causing to be used or made any representations, statements, or assertions, in advertisements, trade promotional literature, or in any other manner, to the effect that the said hair dye or other hair coloring product of substantially the same composition is safe or harmless to use, or is nontoxic or nonpoisonous, or does not contain any toxic, poisonous, or deleterious ingredients or properties; (b) from directly or indirectly using or causing to be used the word "Notox" as, or in, the designation of said hair dye or of said other hair coloring product upon the commercial containers thereof; and from designating, describing, or representing any of the said products with such word "Notox" in advertising matter or trade promotional literature used in promoting the sale or use thereof.

Respondent filed a report, as called for by the order, showing compliance in part with the terms of the order, and leaving in issue, chiefly, its right to the use of the word "Notox."

At the instance of the Commission, the court has signed an order providing for condensation of the record before printing.

R. F. Keppel & Bro., Inc., Lancaster, Pa.—A candy manufacturer, filed with the Third Circuit (Philadelphia), January 25, 1932, its petition to review and set aside the Commission's order.

The findings are to the effect that this corporation, in connection with the sale and distribution of its products, employs certain methods

in the nature of lotteries or gaming devices. For instance, one assortment of its candies is composed of a number of pieces of uniform size, shape, and quality, retailing for 1 cent each, a small number of which have concealed within them pieces of money. The prices of individual pieces in another assortment are indicated by printed slips concealed within the wrappers; and a third assortment provides for certain prizes, dependent upon the colors of the centers of the pieces of candy in the box.

A decision, adverse to the Commission was handed down January 23, 1933 (63 F. (2d) 81), one judge dissenting.

The majority opinion held that—

> The petitioner did nothing against public policy, within the restricted sense of the term, because its acts did not, of themselves, tend to hinder competition nor create monopoly. Whatever they did, their competitors could do. Other candy manufacturers were free to use the same sales methods as those of the petitioner and to obtain their share of the penny-candy trade on an equal footing with the petitioner. The testimony shows that a decided majority of candy manufacturers did in fact use similar methods. There is nothing in the petitioner's practices tending to hinder competition or create monopoly.

Judge Woolley, dissenting, among other things, said:

> Differing in a way that makes the trading stamp system look almost commendable, the petitioning candymaker in this case not only entered into competition for the penny candy trade with smaller candy units but, stepping outside of commerce, injected into its competition a gamble which has made its competitors contest with it not only for the purchasing trade but for the speculating public. To sell their goods, its competitors have to compete with the petitioner not only in wares and prices but by devising and putting into practice more seductive gambling schemes. This, I think, is not commerce; it is merchandising chance instead of candy.
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> It developed that when penny and nickel "chance candies" are on sale with "straight goods", children almost universally select those involving a gamble. The result is that "straight goods" rarely sell over the same counter with "chance candies." So established is this observation that many keepers of small stores have ceased to buy and display "straight goods" for the penny trade. They sell only "chance candies." In consequence more than half of the manufacturers of penny candies in this country have gone into the trick trade. Many traveling salesmen for "straight goods" houses have complained of their inability to sell their wares in competition with "chance candies." Others have refused further to continue the effort and have threatened to seek employment elsewhere. One "straight goods" concern attributes to competition by "chance candies" a drop in its business of 50 percent in the sale of penny goods and 20 percent in the sale of nickel goods.
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> Still another manufacturer who stuck to "straight goods" saw his business reduced 85 percent by reason of this new type of competition. * * * Another concern was "forced" to meet the petitioner's competition by putting out trick candy packages. It then discontinued the practice but later was forced to resume it, mainly because of "a howl set up by our salesmen that they could not get the business". Again it stopped the practice and again it was forced to

resume it in order not only to regain business in "chance candies" but to retain its business in "straight goods" as customers who still deal in candies of both kinds want to buy from one manufacturer or jobber. When it stopped selling "chance candies" its business fell off from 40 to 50 percent. When it started again, its business increased at once. Officers and salemen of other companies testified to similar experiences, which apparently extend through the trade.

And, finally, there is evidence that candies in break-and-take packages are smaller in size, lighter in weight, and inferior in quality, proving rather conclusively that children are imposed upon and that in competition with "straight goods" at the same prices the "chance" is the thing that makes the sales.

A petition for certiorari was filed June 21 last. Among reasons advanced for granting the writ, the petition sets forth that the case presents a question of public importance which has not been but should be decided by the court, viz, that the holding of the Third Circuit means that competition in trade need no longer be based on the quantity, quality, or price of the article sold, but upon the manufacturing and packing of the merchandise in such manner that it is not only merchandise but also a gambling device, which, when used in retail sales, is illegal under the laws of all the States; that this device not only results in the merchandising of something other than articles of commerce—in this case a chance—but injures the business of those manufacturers who for ethical as well as legal reasons refuse to be a party to similar plans, thereby hindering competition.

James S. Kirk & Co., Chicago, filed with the Seventh Circuit (Chicago), January 12, 1929, its petition to review and set aside the commission's order in this case, which, among other things, directed it to cease and desist from use of the word "Castile", and the words "olive oil soap", either alone or in conjunction or in association with any other word or words which are the name of, or are descriptive or suggestive of, an oil or a fat, in labeling, branding, or otherwise describing soap offered for sale or sold in commerce, the oil or fatty composition of which is not wholly derived from olives.

The court, October 8, 1930, granted the petition for intervention presented by the Procter & Gamble Co., on the showing that this company had acquired all of the soap business of James S. Kirk & Co., including the brand and trade names used by the latter to designate the soaps manufactured and sold by it as "Castile."

The case was argued on the merits January 19, 1932, and the commission's order was reversed on April 15, 1932 (59 F. (2d) 179). Pertinent excerpts from the opinion follow:

The commission finds as a fact that castile soap derives its name from the fact that it was first made in the Province of Castile in Spain, in a very early day, and that its oily or fatty ingredient was derived exclusively from olives; that by custom and usage any soap whose sole oily or fatty ingredient is derived from olives is known as castile soap, regardless of its place of manufacture. We are convinced from the record before us that during the earlier years castile soap was recognized and considered as a soap whose sole oily and fatty ingredient

was derived from olives, and the dictionaries of the various countries, including America, so define it, and the pharmacopoeias designated it as the one to be used in all medical preparations and prescriptions in which soap was required because its sole oily or fatty ingredient was olive oil. The words "Castile soap" thereby became synonymous with "olive oil" soap and such synonymity still prevails with many people.

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A perusal of the very voluminous record in the case convinces us that the present contrariety of opinion as to the meaning of the words "castile soap" is a result of an effort on the part of certain soap manufacturers, both foreign and American, extending from very early times to the present, to corrupt and change the public's understanding of the meaning of those words to the manufacturers' advantage. That this effort has been in a great degree successful can no more be denied than the methods employed can be approved.

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That in former years the methods used did deceive and had the capacity and tendency to deceive is fully supported by the evidence; and were it not for the action of the Bureau of Standards of the United States Department of Commerce, that capacity and tendency would still exist.

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By the act of 1901, 31 Stat. 1449, 15 U.S.C.A. 271, *et seq.*, Congress established the National Bureau of Standards and authorized that bureau's director to issue bulletins for public distribution containing such information as might be of value to the public or facilitate the bureau in the exercise of its functions. Pursuant thereto, the following bulletin was promulgated and distributed:

UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF STANDARDS

Circular No. 62, "Soap," 3d edition, published January 24, 1923, at p. 9:

"Castile soap was originally made from low-grade olive oils. The name now represents a type of soap, the term 'castile' being applied to a soap intended for toilet or household use, sold usually in large, unwrapped, unperfumed bars, which are cut up when sold or when used. It is often drawn directly from the kettle without 'crutching', but is sometimes crutched a little or even enough to make it float and is sometimes milled. It is also sold in small bars, both wrapped and unwrapped. The type is not one easily defined, so now when made from olive oil it is invariably sold as olive-oil castile. There are soaps made entirely from coconut oil which are sold as coconut castiles or hard-water castiles. Many other castiles are made from a mixture of coconut oil and tallow."

This circular was discussed in petitioner's briefs and it was ignored by respondent. We deem it quite pertinent and decisive of the question before us. The Government, through its agency, the Bureau of Standards, has thus committed itself to the proposition that castile soap may be made of oily and fatty elements other than olive oil. Being solely a question of fact, we deem it expedient for other Departments of the Government, including the judiciary, to accept such construction, if for no other reason than that of consistency.

The Commission, May 5, 1932, filed a petition for rehearing; this was denied June 22, 1932.

On July 1 the Commission voted in favor of making an application for writ of certiorari. The Solicitor General was opposed to this, but authorized the Commission to file a petition, which it did, October 22,

1932, the Solicitor General thereafter filing a statement to the effect that he had declined to join in the petition or in the brief in support.

The Commission, in its petition and accompanying brief, pointed out that the Federal Government, through the Bureau of Standards, had not committed itself to the proposition that castile soap might be made of oily and fatty elements other than olive oil, and did not purport to do so; that the Bureau of Standards was without authority under its organic act to commit the Federal Government to any such proposition; that the statements of the Bureau of Standards were not based on evidence in the legal sense; and that the Commission's power to prevent the use of unfair methods of competition in interstate commerce could not be nullified by any action taken by the Bureau of Standards.

Brief in opposition was filed November 19, 1932; and the petition was denied December 5, 1932 (287 U.S. 663).

H. F. McGee, Cincinnati.—This individual, who is now president of the Standard Historical Society, and who, as vice president of the Perpetual Encyclopedia Corporation was one of the respondents in the Commission's case against that corporation, on October 21, 1932, filed with the Sixth Circuit (Cincinnati), his petition to review and set aside the Commission's order insofar as it applied to the sale of his reference book The Standard History of the World. McGee claimed, in his report of compliance to the Commission's order of July 11, 1932, that he had long before severed his connections with the Perpetual Encyclopedia Corporation, and that he had no intention of becoming connected in any way with it or the other concerns named in the Commission's order, or any organization selling or dealing in the encyclopedia sold by the Perpetual Encyclopedia Corporation under the three different titles: Home and School Reference Book, Source Book, and American Reference Library. His position was that the Commission's order, which was directed against various misleading representations and statements, in the sale of popular-priced encyclopedias, did not extend to his activities in the sale of The Standard History of the World.

The contention of the Commission, on the other hand, was that McGee was named in the order to cease and desist both as an officer of the Perpetual Encyclopedia Corporation and as an individual, and that the order prohibited him from indulging in the practices found to to unfair, either in connection with the Perpetual Encyclopedia Corporation or any other corporation, or in his individual capacity.

On April 4, 1933, pursuant to a stipulation between the parties, the court entered an order dismissing the petition for review without costs and without prejudice to either party. The stipulation provided that the cease and desist order in the Perpetual case would not be enforced by the Commission against McGee prior to the entry of the final order by the Commission disposing of another complaint,

entitled "In the Matter of Standard Historical Society et al.," and that, after the entry of the order in the latter proceeding, the Commission would not enforce against McGee such of the terms of the final order in the Perpetual case as either (a) pertained to matters in issue at the trial of the Standard Historical Society proceeding, or (b) shall be embraced within the terms of the final order disposing of the Standard case.

Royal Milling Co., Nashville, etc.—On June 12, 1931, John McGraw and E. A. Glennon, partners, conducting business under the names of Royal Milling Co., Richland Milling Co., and Empire Milling Co., filed with the Sixth Circuit (Cincinnati) a petition to review and set aside the Commission's order. Similar petitions were filed January 6, 1932, by the Tennessee Grain Co., Nashville Roller Mills, Snell Milling Co., State Milling Co., and the Cherokee Mills.

The petitioners in question were all concerns situated at Nashville, Tenn., and selling flour in the Southeastern States; and the findings of the Commission were to the effect that they used the words "Milling" and "Mills" in their corporate or trade names, and represented themselves as manufacturers of flour, when, as a matter of fact, they did not extract flour from wheat, but bought it from concerns actually grinding the wheat, and mixed the flours together by stirring them in what is known as a "batch mixer," in some instances stirring in, with the flour, such substances as salt, soda, and phosphate, so that leavening ingredients would not have to be added later.

The Commission ordered these concerns to cease and desist from the use of the words "Mills," "Milling," and "Manufacturers of Flour," until they actually owned and operated the plants in which the flour, sold by them was ground.

The cases were briefed and argued together, and, on May 4, 1932, were decided against the Commission (58 F. (2d) 581).

On September 23, the Solicitor General, on behalf of the Commission, filed with the Supreme Court a petition for writ of certiorari; it was granted on October 24 (287 U.S. 590). The case was argued January 20, and on February 6, 1933, the Supreme Court handed down its decision reversing the decree of the Sixth Circuit (288 U.S. 212). The court, in its opinion, said:

> The business involved is large and the competition among the several concerns substantial; and the use of the enumerated trade names by the respondent tends to divert and does divert business from both the grinders and those blenders who do not use such trade names or an equivalent therefor. Respondents have circulated written and printed circulars among the trade which either directly assert, or are calculated to convey the impression, that their product is composed of flour manufactured by themselves from the wheat. These statements and the use of the trade names under which respondents do business have induced many consumers and dealers to believe that respondents are engaged in grinding from the wheat the product which they put out.
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To sustain the orders of the Commission, three requisites must exist: (1) That the methods used are unfair; (2) that they are methods of competition in interstate commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the interest of the public. Upon the first two of these we need take no time, for clearly the methods used were unfair and were methods of competition.

* * * * * * *

We also are of opinion that it sufficiently appears that the proceeding was in the interest of the public. It is true, as this court held in *Federal Trade Comm.* v. *Klesner*, 280 U.S. 19, that mere misrepresentation and confusion on the part of purchasers or even that they have been deceived is not enough. The public interest must be specific and substantial. In that case (p. 28) various ways in which the public interest may be thus involved were pointed out; but the list is not exclusive. If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article, or one equally as good, but having a different origin. Here the findings of the Commission, supported by evidence, amply disclose that a large number of buyers, comprising consumers and dealers, believe that the price or quality or both are affected to their advantage by the fact that the article is prepared by the original grinder of the grain. The result of respondents' acts is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin. We are of opinion that the purchasing public is entitled to be protected against that species of deception, and that its interest in such protection is specific and substantial.

The court did take the position, however, that the Commission went too far in ordering what amounted to a suppression of the trade names of the companies, saying, in this connection, that:

It will be enough if each respondent be required by modified order to accompany each use of the name or names with an explicit representation that respondent is not a grinder of the grain from which the flour prepared and put out is made, such representation to be fixed as to form and manner by the Commission, upon consideration of the present record and any further evidence which it may conclude to take.

Under date of April 4, the Sixth Circuit, upon the filing of the mandate of the Supreme Court, entered an order setting aside its decree of May 4, 1932, and remanding the cause to the Commission for modification of its order in conformity with the opinion of the Supreme Court. Hearing on this matter has been set for September 18.

White Pine Cases—Pacific Coast States.—Petitions for review of the Commission's orders in a number of these cases were filed with the Ninth Circuit (San Francisco) during January 1932. The concerns involved are situated in California, Oregon, Nevada, Arizona, and New Mexico. They are part of a group of 50 cases in which the Commission issued complaints charging unfair methods of competition by using the phrase "white pine" as part of such trade designations as "California white pine", "Arizona white pine", "New Mexico white pine", and "Western white pine" for a species of

yellow pine known as *Pinus ponderosa*. Of the 50 complaints, 11 were dismissed before trial or subsequently. Against the remaining 39, orders to cease and desist were entered. Twenty-five companies have elected to abide by the orders.

The Commission's orders are based on findings to the effect that the lumber to which respondents apply the phrase "white pine" is not, as above stated, white pine, but a species of yellow pine; that the latter is inferior for certain important uses; has a higher degree of variableness in such qualities as hardness, weight, density, and color; has a large proportion of sapwood; is less durable when exposed to the weather; has a greater tendency toward shrinking, warping, and twisting, etc.

The Commission further found that respondents' use of the phrase "white pine" was misleading and confusing to the general public, architects and builders, many retail dealers, and to certain millwork manufacturers; and was to the detriment of the public and of competitors selling genuine white pine or selling *Pinus ponderosa* lumber without designating it as "white pine." Many of these findings were attacked in the petitions filed in court.

The order made by the court in this case, permitting the filing of petitions for review, required the inclusion, in the record to be certified by the Commission, of a copy of the trial examiner's report upon the facts. The Commission moved to amend the order by striking out this requirement, and the court, March 7, 1932, granted this motion (56 F. (2d) 774).

The case was argued on the merits June 24, 1932, and decided against the Commission, April 4, 1933 (64 F. (2d) 618).

The Ninth Circuit, after rather extensive references to the record, said:

> It is the conclusion of the court that, viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name "California White Pine" is an unfair method of competition or that its prevention would be in the interest of the public.

A petition for writ of certiorari was docketed with the Supreme Court of the United States on July 3. (No. 240, October term, 1933.) It recited that the Ninth Circuit erred: (1) In reviewing the testimony without reference to the Commission's specific findings of fact, but for the purpose of determining whether the Commission's conclusion that respondents' method of competition is unfair was supported by testimony; (2) in weighing the evidentiary value of nomenclature approved by the Bureau of Standards; (3) in holding that the testimony is insufficient to support the Commission's findings that respondents' use of the commercial name California White Pine "is an unfair method of competition or that its prevention would be in the interest of the public", without having held that any of the

Commission's specific findings were unsupported by substantial evidence, or that the Commission's findings did not support its orders; (4) in disregarding the provisions of the Federal Trade Commission Act that the Commission's findings of fact shall be conclusive "if supported by testimony"; (5) in holding that the indirect effect of the Commission's order upon the conservation of forests is a relevant consideration in determining whether the proceeding was "to the interest of the public"; and (6) in setting aside the cease and desist orders of the Commission.

TABLES SUMMARIZING WORK OF THE LEGAL DIVISION AND COURT PROCEEDINGS, 1915–33

TABLE 1.—*Preliminary inquiries*

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924
Pending beginning of year	0	4	12	32	19	29	61	68	147	102
Instituted during year	119	265	462	611	843	1,107	1,070	1,223	1,234	1,568
Total for disposition	119	269	474	643	862	1,136	1,131	1,291	1,381	1,670
Dismissed after investigation	3	123	289	292	298	351	500	731	897	1,157
Docketed as applications for complaints	112	134	153	332	535	724	563	413	382	322
Total disposition during year	115	257	442	624	833	1,075	1,063	1,144	1,279	1,479
Pending end of year	4	12	32	19	29	61	68	147	102	191

	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	191	176	298	328	224	260	409	307	423
Instituted during year	1,612	1,483	1,265	1,331	1,469	1,505	1,380	1,659	1,593
Total for disposition	1,803	1,659	1,563	1,659	1,693	1,765	1,789	1,966	2,016
Dismissed after investigation	1,270	1,075	942	1,153	1,049	1,060	1,150	1,319	1,274
Docketed as applications for complaints	357	286	293	282	384	296	332	224	264
Total disposition during year	1,627	1,361	1,235	1,435	1,433	1,356	1,482	1,543	1,538
Pending end of year	176	298	328	224	260	409	307	423	478

CUMULATIVE SUMMARY TO JUNE 30, 1933

Inquiries instituted		21,799
Dismissed after investigation	14,933	
Docketed as applications for complaints	6,388	
Total disposition		21,321
Pending June 30, 1933		478

TABLE 2.—*Export trade investigations*

	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	53	35	79	43	10	16	29	42	40	27	17	8
Instituted during year	10	79	16	11	52	54	68	20	11	7	2	1
Total for disposition	63	114	95	54	62	70	97	62	51	34	19	9
Disposition during year	28	35	52	44	46	41	55	22	24	17	11	5
Pending end of year	35	79	43	10	16	29	42	40	27	17	8	4

CUMULATIVE SUMMARY TO JUNE 30, 1933

Investigations instituted	384
Total disposition	380
Pending June 30, 1933	4

TABLE 3.—*Applications for complaints*

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924
Pending beginning of year	0	104	130	188	280	389	554	467	458	572
Applications docketed	112	134	153	332	535	724	426	382	416	377
Rescinded dismissals:										
Stipulated:										
Chief trial examiner	0	0	0	0	0	0	0	0	0	1
Special board	0	0	0	0	0	0	0	0	0	0
Trade-practice acceptance	0	0	0	0	0	0	0	0	0	0
Others	0	0	0	0	0	0	0	5	6	4
Rescinded "To complaints"	0	0	0	0	0	0	0	0	0	0
Total for disposition	112	238	283	520	815	1,113	980	854	880	954
To complaints	0	3	16	80	125	220	156	104	121	143
Dismissals:										
Stipulated:										
Chief trial examiner	0	0	0	0	0	0	0	0	0	3
Special board	0	0	0	0	0	0	0	0	0	0
Trade-practice acceptance	0	0	0	0	0	0	0	0	0	0
Others	8	105	79	160	301	339	357	292	187	243
Total disposition during year	8	108	95	240	426	559	513	396	308	389
Pending end of year	104	130	188	280	389	554	467	458	572	565

	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	565	488	420	457	530	843	753	754	440
Applications docketed	340	273	292	334	679	535	511	378	404
Rescinded dismissals:									
Stipulated:									
Chief trial examiner	1	1	0	2	2	3	5	3	3
Special board	0	0	0	0	0	0	0	0	0
Trade-practice acceptance	0	0	0	0	1	3	2	0	0
Others	3	4	0	0	0	3	4	1	0
Rescinded "To complaints"	0	0	0	0	0	2	2	0	3
Total for disposition	909	766	712	793	1,212	1,389	1,277	1,136	850
To complaints	118	57	45	58	100	171	110	90	52
Dismissals:									
Stipulated:									
Chief trial examiner	5	102	80	68	118	244	160	123	96
Special board	0	0	0	0	0	31	43	209	85
Trade-practice acceptance	0	2	3	19	17	32	5	6	3
Others	298	185	127	118	134	158	205	268	138
Total disposition during year	421	346	255	263	369	636	523	696	374
Pending end of year	488	420	457	530	843	753	754	440	476

CUMULATIVE SUMMARY TO JUNE 30, 1933

Applications docketed		7,337
Rescinded dismissals:		
Stipulated:		
Chief trial examiner	21	
Special board	0	
Trade-practice acceptance	6	
Others	30	
Total rescinded dismissals		57
Rescinded "to complaints"		7
Total for disposition		7,401
To complaints		1,769
Dismissals:		
Stipulated:		
Chief trial examiner	999	
Special board	368	
Trade-practice acceptance	87	
Others	3,702	
Total dismissals		5,156
Total disposition		6,925
Pending June 30, 1933		476

TABLE 4.—*Complaints*

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924
Pending beginning of year	0	0	5	10	86	133	287	312	257	232
Complaints docketed	0	5	9	154	135	308	177	111	144	154
Rescinded orders to cease and desist:										
Contest	0	0	0	0	0	0	0	0	0	4
Consent	0	0	0	0	0	0	0	0	0	1
Default	0	0	0	0	0	0	0	0	0	0
Rescinded dismissals:										
Stipulated	0	0	0	0	0	0	0	0	0	0
Trade-practice acceptance	0	0	0	0	0	0	0	0	0	0
Others	0	0	0	0	0	0	1	0	1	1
Total for disposition	0	5	14	164	221	441	465	423	402	392
Complaints rescinded	0	0	0	0	0	0	0	0	0	0
Orders to cease and desist:										
Contest	0	0	3	71	75	110	116	74	28	45
Consent	0	0	0	0	0	0	0	17	54	47
Default	0	0	0	0	0	0	0	0	0	0
Dismissals:										
Stipulated	0	0	0	0	0	0	0	0	0	0
Trade-practice acceptance	0	0	0	0	0	0	0	0	0	0
Others	0	0	1	7	13	44	37	75	88	36
Total disposition during year	0	0	4	78	88	154	153	166	170	128
Pending end of year	0	5	10	86	133	287	312	257	232	264

	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	264	220	152	147	136	198	275	225	208
Complaints docketed	132	62	76	64	149	172	110	92	53
Rescinded orders to cease and desist:									
Contest	0	0	0	1	0	0	0	0	0
Consent	0	0	0	0	0	0	0	1	0
Default	0	0	0	0	0	0	0	0	0
Rescinded dismissals:									
Stipulated	0	0	0	0	0	0	0	0	0
Trade-practice acceptance	0	0	0	0	0	0	0	0	0
Others	0	0	1	0	0	0	0	0	0
Total for disposition	396	282	229	212	285	370	385	318	261
Complaints rescinded	0	0	0	0	0	3	2	1	3
Orders to cease and desist:									
Contest	30	28	34	38	56	36	87	39	37
Consent	43	16	18	8	7	11	14	18	25
Default	0	0	0	2	4	1	7	6	4
Dismissals:									
Stipulated	6	3	1	3	3	3	4	2	1
Trade-practice acceptance	0	0	5	5	1	0	1	0	6
Others	97	83	24	20	16	41	45	44	41
Total disposition during year	176	130	82	76	87	95	160	110	117
Pending end of year	220	152	147	136	198	275	225	208	144

CUMULATIVE SUMMARY TO JUNE 30, 1933

Complaints		2,107
Rescinded orders to cease and desist:		
Contest	5	
Consent	2	
Default	0	
Total rescinded orders to cease and desist		7
Rescinded dismissals:		
Stipulated	0	
Trade-practice acceptance	0	
Others	4	
Total rescinded dismissals		4
Total for disposition		2,118
Complaints rescinded		9
Orders to cease and desist:		
Contest	907	
Consent	278	
Default	24	
Total orders to cease and desist		1,209
Dismissals:		
Stipulated	26	
Trade-practice acceptance	18	
Others	712	
Total dismissals		756
Total disposition		1,974
Pending June 30, 1933		144

COURT PROCEEDINGS—ORDERS TO CEASE AND DESIST

TABLE 5.—*Petitions for review—Lower courts*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	0	2	8	13	9	4	14	9	8	3	3	35	3	8	15
Appealed	4	9	18	5	5	15	6	5	4	4	34	1	10	22	3
Total for disposition	4	11	26	18	14	19	20	14	12	7	37	36	13	30	18
Decisions for Commission	1	0	1	4	5	1	6	5	4	3	1	4	3	1	2
Decisions for others	1	3	11	5	4	4	3	1	2	1	1	26	1	11	13
Petitions withdrawn	0	0	1	0	1	0	2	0	3	0	0	3	1	3	1
Total disposition during year	2	3	13	9	10	5	11	6	9	4	2	33	5	15	16
Pending end of year	2	8	13	9	4	14	9	8	3	3	35	3	8	15	2

CUMULATIVE SUMMARY TO JUNE 30, 1933

Appealed		145
Decisions for Commission	41	
Decisions for others	87	
Petitions withdrawn	15	
Total disposition		143
Pending June 30, 1933		2

This table lists a cumulative total of 87 decisions against the Commission in the United States Circuit Courts of Appeals. However, the Grand Rapids furniture (veneer) group (with 25 different docket numbers) is in reality 1 case, with 25 different subdivisions. It was tried, briefed and argued as 1 case, and was so decided by the court of appeals. The same holds true of the curb-pump group (with 12 different subdivisions), the Royal Milling Co. group (with 6 different subdivisions), and the White Pine cases (12 subdivisions). In reality, therefore these 55 docket numbers mean but 4 cases; and, if cases and not docket numbers are counted, the total of adverse decisions would be 36.

TABLE 6.—*Petitions for review—Supreme Court of the United States*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	0	0	1	3	3	1	0	4	6	1	0	1	0	0	0
Appealed by Commission	0	2	2	4	5	0	5	2	1	0	0	1	1	0	8
Appealed by others	0	0	0	0	2	1	1	3	1	0	2	0	0	1	0
Total for disposition	0	2	3	7	10	2	6	9	8	1	2	2	1	1	8
Decisions for Commission	0	0	0	2	0	0	0	0	3	0	0	0	0	0	6
Decisions for others	0	1	0	0	5	1	0	0	2	0	0	1	1	0	0
Petitions withdrawn by Commission	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0
Certiorari denied Commission	0	0	0	2	1	0	1	2	1	0	0	0	0	0	1
Certiorari denied others	0	0	0	0	2	1	1	1	1	1	1	0	0	1	0
Total disposition during year	0	1	0	4	9	2	2	3	7	1	1	2	1	1	7
Pending end of year	0	1	3	3	1	0	4	6	1	0	1	0	0	0	1

CUMULATIVE SUMMARY TO JUNE 30, 1933

Appealed by Commission	31	
Appealed by others	11	
Total appealed		42
Decisions for Commission	11	
Decisions for others	11	
Petitions withdrawn by Commission	2	
Certiorari denied Commission	8	
Certiorari denied others	9	
Total disposition		41
Pending June 30, 1933		1

TABLE 7.—*Petitions for enforcement—Lower courts*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	0	0	0	0	0	0	1	0	2	3	2	5	3	2	1
Appealed	0	0	0	0	1	1	1	3	2	3	9	4	3	0	2
Total for disposition	0	0	0	0	1	1	2	3	4	6	11	9	6	2	3
Decisions for Commission	0	0	0	0	1	0	2	0	0	1	5	4	4	0	0
Decisions for others	0	0	0	0	0	0	0	1	0	1	0	1	0	1	0
Petitions withdrawn	0	0	0	0	0	0	0	0	1	2	1	1	0	0	1
Total disposition during year	0	0	0	0	1	0	2	1	1	4	6	6	4	1	1
Pending end of year	0	0	0	0	0	1	0	2	3	2	5	3	2	1	2

CUMULATIVE SUMMARY TO JUNE 30, 1933

Appealed		29
Decisions for Commission	17	
Decisions for others	4	
Petitions withdrawn	6	
Total disposition		27
Pending June 30, 1933		2

TABLE 8.—*Petitions for enforcement—Supreme Court of the United States*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0
Appealed by Commission	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Appealed by others	0	0	0	0	0	0	0	1	0	1	0	1	0	0	0
Total for disposition	0	0	0	0	0	0	0	1	1	1	1	2	0	0	0
Decisions for Commission	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Decisions for others	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0
Certiorari denied others	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0
Total disposition during year	0	0	0	0	0	0	0	0	1	1	0	2	0	0	0
Pending end of year	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0

CUMULATIVE SUMMARY TO JUNE 30, 1933

Appealed by Commission		1
Appealed by others		3
Total appealed		4
Decisions for Commission	0	
Decisions for others	2	
Certiorari denied others	2	
Total disposition		4
Pending June 30, 1933		0

COURT PROCEEDINGS—MISCELLANEOUS

TABLE 9.—*Interlocutory, mandamus, etc.—Lower courts*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	0	1	4	5	6	4	4	4	4	5	3	2	1	1	2
Appealed by Commission	1	2	0	3	5	0	1	0	1	0	1	0	1	0	1
Appealed by others	1	2	2	3	0	0	0	1	1	2	1	2	0	2	0
Total for disposition	2	5	6	11	11	4	5	5	6	7	5	4	2	3	3
Decisions for Commission	1	0	1	3	0	0	0	0	1	1	3	1	1	1	2
Decisions for others	0	1	0	1	7	0	0	0	0	1	0	1	0	0	0
Petitions withdrawn by Commission	0	0	0	0	0	0	1	1	0	2	0	0	0	0	0
Petitions withdrawn by others	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0
Total disposition during year	1	1	1	5	7	0	1	1	1	4	3	3	1	1	2
Pending end of year	1	4	5	6	4	4	4	4	5	3	2	1	1	2	1

CUMULATIVE SUMMARY, TO JUNE 30, 1933

Appealed by Commission	16	
Appealed by others	17	
Total appealed		33
Decisions for Commission	15	
Decisions for others	11	
Petitions withdrawn by Commission	4	
Petitions withdrawn by others	2	
Total disposition		32
Pending June 30, 1933		1

TABLE 10.—*Interlocutory, mandamus, etc.—Supreme Court of the United States*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Pending beginning of year	0	0	0	0	0	6	4	1	1	0	0	0	0	0	0
Appealed by Commission	0	0	0	0	6	0	0	0	1	0	0	0	0	0	0
Appealed by others	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Total for disposition	0	0	0	0	6	6	4	1	2	0	0	1	0	0	0
Decisions for Commission	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Decisions for others	0	0	0	0	0	2	3	0	0	0	0	0	0	0	0
Certiorari denied Commission	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Certiorari denied others	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Total disposition during year	0	0	0	0	0	2	3	0	2	0	0	1	0	0	0
Pending end of year	0	0	0	0	6	4	1	1	0	0	0	0	0	0	0

CUMULATIVE SUMMARY, TO JUNE 30, 1933

Appealed by Commission	7	
Appealed by others	1	
Total appealed		8
Decisions for Commission	1	
Decisions for others	5	
Certiorari denied Commission	1	
Certiorari denied others	1	
Total disposition		8
Pending June 30, 1933		0

PART IV. TRADE-PRACTICE CONFERENCES

COMMISSION ACTION ON TRADE-CONFERENCE RULES

HISTORY AND PURPOSE OF TRADE-CONFERENCE PROCEDURE

RESULTS ATTAINED FROM TRADE-PRACTICE CONFERENCES

TRADE-PRACTICE CONFERENCE PROCEDURE

PART IV. TRADE-PRACTICE CONFERENCES

COMMISSION ACTION ON TRADE-PRACTICE CONFERENCE RULES SHOWN

Trade-practice conference rules for 21 industries were made public by the Commission during the fiscal year.

The Commission approved and accepted trade-practice conference rules for 17 industries during this period, as follows: Furnace pipe and fittings; ornamental iron, bronze, and wire; electrical wholesalers; sanitary napkins; saw and blade service; ice-cream industry, District of Columbia and its vicinity; mopsticks; cleaning and dyeing industry, District of Columbia and its vicinity; cedar chests; live poultry, New York City and adjacent territory; milk producers and distributors, Michigan and adjoining States; all-cotton wash goods; ribbed hosiery; upholstery textiles; warm-air furnaces; woodworking machinery; and marking devices.

Reports of conferences embodying the rules of the following are before the Commission awaiting final action: Musical merchandise industry, cleaning and dyeing industry of Pennsylvania and adjoining States, Barre-granite industry, and baby-chick industry.

Action by the Commission on trade-practice conference rules is not made public until such rules have been approved by the Commission and accepted by the committee authorized by the industry to act for it in matters affecting trade-practice conference rules.[1]

HISTORY AND PURPOSE OF TRADE-PRACTICE CONFERENCE PROCEDURE

The trade-practice conference was the logical development of the efforts of the Commission cooperating with industry to protect the public against unfair methods of competition and to raise the standards of business practices. As early as the year 1919 the Commission established the procedure of holding conferences with industry for the purpose of eliminating unfair methods of competition as well as trade abuses existing therein.

The trade-practice conference affords representatives of an industry the opportunity to assemble voluntarily and, under the auspices of the Federal Trade Commission, consider unfair and unethical practices and trade abuses and provide methods for their correction or

[1] Responsive to many requests from business through trade associations and individuals, the Commission authorized the publication of a trade-practice conference booklet containing the rules for close to 100 industries. A copy of this pamphlet may be obtained by addressing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., enclosing 15 cents.

abandonment. It is a procedure whereby an industry takes the initiative in establishing self-government of business, making its own rules of business conduct, subject to approval by the Commission.

The procedure deals with an industry as a unit. It is concerned solely with practices and methods. It wipes out on a given date unfair methods of competition, unethical conduct, and trade abuses condemned at the conference and thus places all competitors on an equally fair competitive basis. It performs the same function as a formal complaint without bringing charges, prosecuting trials, or employing compulsory process, but multiplies results by as many times as there are members in the industry. Attendance at a conference or actual participation in the deliberations does not indicate that any firm or individual has indulged in the practices condemned.

The procedure is predicated on the theory that the primary concern of the Federal Trade Commission is the interest of the public. The public is entitled to the benefits which flow from competition, and each competitor is entitled to fair competition. The legitimate conduct of business is in perfect harmony with the best interest of the public. That which injures one undoubtedly harms the other, and the Commission in the trade-practice conference provides a procedure which protects the interests of both. In these conferences is found a common ground upon which competitors can meet, lay aside personal charges, jealousies, and misunderstandings, freely discuss practices of an unfair or harmful nature, reach a basis of mutual understanding and confidence, and provide for the correction or abandonment of such practices to the advantage of industry and the public.

For many years attempts have been made to eliminate by means of self-regulation those unfair methods of competition, unethical practices, and trade abuses prevailing within various industries. The degree of success attained is readily measured by existing competitive conditions. If these conditions are all that can be reasonably desired, the success attained is complete. If, however, harmful practices still exist, their efforts at self-regulation have failed. The trade-practice conference affords an effective machinery for self-regulation.

RESULTS ATTAINED FROM THE TRADE-PRACTICE CONFERENCE

Trade-practice conferences have proven of incalculable benefit to the public by the voluntary elimination of unfair methods of competition, and have resulted in a great saving of time and expense by obviating the necessity of investigation and trial by complaint.

A prominent authority on trade-practice conferences has stated that through voluntary action, which is fundamental in trade-practice conference procedure, an industry can accomplish in an hour or two what otherwise might consume years of prosecution;

that during the last few years this method of settling such problems has been featured and encouraged to the great advantage of the public; and that every industry willing to come into a trade-practice conference and clean its own house encourages other industries to adopt the same method. The effect of this good example spreads throughout the country informing business men of the attitude of the Federal Trade Commission, which is to neither hamper, delay, nor to irritate business but to materially aid it.

Trade-practice conferences result in a generally recognized and clearly marked trend toward the use of higher standards of business conduct while bringing into closer relationship both industry and the Commission. Many persons engaged in business and industry are not aware, until a trade-practice conference has been held, that some competitive methods commonly used by them constitute actual violations of law; neither do they realize that the unnecessary cost of of unfair competition and wasteful practices, if abandoned at one and the same time by voluntary agreement of all in the industry, may be converted from an item of expense to a substantial profit without adding to the price paid by the ultimate consumer.

The value of the trade-practice conference is further shown by legislation enacted by the State of California providing for the enforcement of certain conference rules pertaining to an industry of that State, a policy which might well be adopted by other States. This law is the "General Dairy Law of California", approved June 15, 1923, and amended May 31, 1927.

TRADE-PRACTICE CONFERENCE PROCEDURE

The first requisite of a trade-practice conference is a desire on the part of a sufficiently large number in that industry to eliminate unfair methods of competition and trade abuses and to improve competitive conditions. The procedure is as follows:

I. METHOD OF APPLYING FOR A TRADE-PRACTICE CONFERENCE

In authorizing a trade-practice conference, the Commission must first be satisfied that the holding of such conference would be desirable and to the best interest of the industry and the public. An application, in the form of a petition or informal communication, should contain the following information:

1. A brief description of the business for which the conference is intended; the products manufactured or the commodities distributed. The annual volume of production, value of production, capitalization of the industry, and like items should be approximated in order to furnish an idea of the size and importance of the industry.

The authority of the person making the application must also be shown. If made by an association executive, a resolution showing the action of the

association should be submitted, together with a statement of the percentage of the entire industry represented by the association membership.

3. The application should state whether the conference is intended for all branches of the industry or whether it should be limited to a particular branch or branches thereof. If the resolutions adopted by manufacturers, for example, are confined to practices which do not materially affect distributors, there would be no particular reason for including distributors. On the contrary, if the proposed action involves distribution, the distributors should be included.

4. The application should also set out and describe the various unfair methods of competition, trade abuses, and uneconomic and unethical practices which exist in the industry at the time the application is filed, and which the industry desires to eliminate through the medium of a trade practice conference. This does not limit the discussion at the conference, however, to the particular subjects thus named, as the conference itself constitutes an open forum wherein any practice existing in the industry may be brought forward as a proper subject for discussion. Any resolutions submitted by any committee or member of the industry prior to the holding of a trade practice conference are tentative and their introduction does not prohibit other members of the industry from offering new or different resolutions.

5. The application should be accompanied by a complete and accurate list of the names and addresses of all firms in the industry, or such list may be furnished shortly thereafter. It should be divided or symbolized to indicate association or nonassociation members, and as to types of concerns, such as manufacturers distributors, etc.

II. PROCEDURE FOLLOWING AUTHORIZATION BY COMMISSION

After the conference has been authorized by the Commission and a Commissioner designated to preside, a time and place are arranged for the meeting and invitations are sent to all members of the industry. At these conferences anyone in the industry may participate and no one is legally obligated by anything that occurs. In order to give the widest possible range to the discussion of practices which may be proposed and to preserve the voluntary character of the conference, the industry is requested to complete the organization of the conference by electing its own secretary.

Resolutions are then introduced, freely discussed, and, if necessary, amended, before final action thereon is taken by members of the conference.

Following the conference the proceedings are reported to the Federal Trade Commission by the director of trade practice conferences with his recommendation.

If, after consideration by the Commission, the rules are approved, its statement containing these rules is sent to a committee of the industry appointed by the conference, with the request that the committee report to the Commission whether it is willing to accept on behalf of the industry the rules as approved by the Commission. Thereafter, if and when these rules have been so accepted, every member of the industry is furnished with a copy of the Commission's action, accompanied by a form providing for individual acceptance. A copy of this form is as follows:

FEDERAL TRADE COMMISSION, *Washington, D.C.*

GENTLEMEN: A copy of the rules of practice for the _____ industry, as approved or accepted by the Federal Trade Commission, has been received and read, and said rules will be observed and followed in the business conduct and practice of this concern.

_____
(Name of concern.)

_____
(Name and title of person signing.)

_____
(Address of concern.)

Date:_____

Such acceptance, properly signed and dated, is then returned to the Federal Trade Commission, where, after recording, it is filed with the records of the industry concerned.

The Commission charges its division of trade practice conferences with the duty of coordinating and facilitating the work incident to the holding of trade practice conferences, of extending the scope of such work within its proper sphere, of observing and studying the work of such, and of encouraging closer cooperation between business as a whole and the Commission in serving the public.

After a trade practice conference is held, the commission retains its interest in the observance of the group I rules of the conference by members of the industry. Observance of group II rules is a matter for the industry. It is the duty of a committee of the industry to notify the commission of any violations of trade practice conference rules.[2]

[2] Rules approved by the Commission relate to practices violative of the law and are designated group I. Other rules, received by the Commission as expressions of the trade, are classed as group II.

PART V. SPECIAL PROCEDURE IN CERTAIN TYPES OF ADVERTISING CASES

ADVERTISERS PAY BILLION DOLLARS YEARLY

ALLEGED REMEDIES FOR DISEASES INVESTIGATED

ADVERTISEMENT OF ALLEGED FLESH REDUCERS

FALSE ADVERTISING IS DESTRUCTIVE AND EXPENSIVE

INVESTIGATES AND REPORTS ON 547 CASES

PART V. SPECIAL PROCEDURE IN CERTAIN TYPES OF ADVERTISING CASES

ADVERTISERS PAY BILLION DOLLARS YEARLY FOR SPACE

The latest reliable reports (1933) show there are 20,143 periodicals published in the United States and Territories.

Altogether, there are 1,389,000,000 copies of newspapers and magazines published in the United States every month—more than 16 billion copies each year.

Advertisers are paying these publications approximately $1,000,000,000 each year for advertising space.

With buyer and seller often widely separated, the old rule of "let the buyer beware" is no longer feasible, as it was when trade was limited to small communities and buyers could see what they were getting. The rule, emphasized by President Roosevelt, of "let the seller beware", is the practical rule for modern commerce.

The only practical protection for the public against deception and fraud by means of false and misleading advertising is to prevent it. Individual recovery of damages through the courts for fraud in small transactions is expensive and usually difficult.

The Federal courts have repeatedly held that the publication of false and misleading representations in advertisements and advertising literature is an "unfair method of competition" within the meaning of the Federal Trade Commission Act.

The Commission's efforts have been effective, as a comparison of the advertising pages of a few years ago with those of today will show; there is a marked improvement in the quality of advertisements. The cooperation by publishers generally has been the big factor in bringing this about.

There always are, however, some in every class who will not observe fair-trade practices, if it pays to ignore them. It is this class of advertisers and publishers that must be restrained by the hand of the law, in order to give their ethical competitors the freedom from unfair competition intended by the act.

The Commission considers all cases of false and misleading advertising brought to its attention by competitors, by the purchasing public, by Government departments and agencies, and by its own periodic check-up on current advertising literature.

Many published advertisements, while not obviously false on their face, contact the vendor with a prospective purchaser to whom false and misleading follow-up literature is sent, in the form of booklets, circulars, and form letters. By means of a questionnaire system developed through experience, the Commission has uncovered and curbed a large amount of this subtle form of deceptive advertising.

It has been estimated that $350,000,000 is paid each year for drugs, medicines, and cosmetics alone. It is well known that the people are swindled to the extent of many millions annually through false and misleading advertising.

ALLEGED REMEDIES FOR DISEASES INVESTIGATED

For illustration, investigations made by the Commission disclose the following data concerning preparations advertised as remedies or cures for diseases:

Gallstones.—Gallstones and bile troubles afford a fertile field for the mail-order medicine man. The public is told in all the words, forms, and phrases afforded by the best dictionaries that cholagogues and laxatives will stimulate the liver to produce more and thinner bile and that such bile will dissolve and eliminate gallstones. Reliable medical authorities uniformly advise that no known drugs will dissolve gallstones once formed; and the theory that bile in any quantity will dissolve such stones is but sales talk without foundation in fact. If the stones have become too large to pass, only an operation can remove them. To represent these compounds as proper or effective treatments for gallstones is dangerously misleading. Their use may cause delay of a necessary operation until the gall bladder bursts, or a diseased gall bladder discharges poison into the system with fatal results.

Diabetes.—Several medical preparations are advertised as remedies for diabetes. The medical profession uniformly reports that nothing has yet been found, taken orally, that will either stimulate the pancreas or do its work. Insulin by injection, diet, and rest are the only effective treatments known to the profession.

Skin troubles.—Many things are advertised and offered, from creams and lotions to acids and skin peels, to overcome pimples, freckles, scars, tan, wrinkles, and all undesired skin blemishes. Some of these combinations are intended to cleanse, some to soften, and some to tint the skin, some are astringents, and some just lubricants to aid massage. Few of these preparations will do what is claimed for them, but notwithstanding this there are tons of worthless skin applications sold for millions of dollars every year.

Fits, epilepsy, and convulsions.—Several vendors of remedies for fits, epilepsy, and convulsions advertise extensively and apparently do a large business. One vendor was found using 103 form letters to induce the unfortunate to buy; and when he had exhausted his re-

sources in efforts to sell, he sold the names to others for a mailing list. Most of the medical compounds offered for this purpose are mere sedatives to quiet the nerves for the time being. All claims that such remedies will permanently overcome a tendency to fits and epileptic attacks are, according to dependable medical authority, without foundation.

ADVERTISEMENT OF ALLEGED FLESH REDUCERS

There has been a great demand for fat reducers. Probably more advertising is done to sell teas, salts, "crèmes", pills, tablets, powders, liquids, belts, girdles, paddles, rollers, and what-not for the purpose of reducing fat, than to sell any other treatment for human ills or defects.

According to the medical profession, there is, aside from powerful and dangerous drugs, no competent method known for reducing fat except limited and proper diet combined with proper exercise.

Flesh foods, tissue builders, and bust developers.—Creams and compounds for external application are advertised to round out and firm up flabby parts, fill up shrunken places, and make "skinny" folks plump, pleasing, and pretty. Medical science advises there is nothing that may be applied externally that will feed flesh and build tissue. Oils and creams are mere lubricants to facilitate recommended massage. Some of these "body-building creams" are identical in composition with some "fat-reducing creams."

Hair tonics, hair growers, hair dyes.—Many tonics are advertised and sold under representations that they will remove dandruff and the cause thereof, stimulate the scalp, invigorate the hair roots, and grow a new crop of hair on bald pates.

Hair dyes are the fortune hunter's paradise. There are legions of them. Some are harmless and some dangerous. Cuts in the scalp may result in infection and poison the whole system. Dyes containing poisonous substances are dangerous.

Dyes may impart some selected color, as paint upon a house, or produce a color that may approximate the darker shade of former years. The use of any dye to darken the hair requires constant application and care necessary to keep the growing hair painted, or a white cushion will span the space between the painted hair and the scalp; claims of permanent results are unfounded.

Gas savers and all sorts of gadgets to reduce travel cost, extend the life of motor vehicles, make speeding safe and driving automatic, are offered for sale under false claims.

Jewelry, watches, beads, and imitation gems of all kinds flood the markets under brands and representations designed to deceive and defraud the public. Synthetic stones, glass and crystals are sold as real diamonds, rubies, and other gems. Simulated pearls are advertised as genuine. Stamped rings and watch cases are advertised as

being engraved. Watches with but one jewel are falsely advertised as jeweled watches.

Famous physicians and scientists.—Numerous medical compounds are advertised as "great scientific discoveries" at the end of long years of research, when in fact they are common formulas used by manufacturing pharmacists or compounded by drug clerks with a mania for mixing medicine and trying it out on some of the "one hundred million guinea pigs." Many of these vendors appear to have little knowledge of medicine or therapy.

FALSE ADVERTISING IS DESTRUCTIVE AND EXPENSIVE

False advertising destroys confidence of the buying public and makes the cost of advertising excessive for truthful merchants. Elimination of false and misleading representations materially reduces the cost of advertising in proportion to sales. Honest merchants benefit and the public is protected.

The cooperative attitude of the press and various business associations interested in advertising is helpful to the Commission in its efforts to protect the consumer. Associations of national advertisers and advertising agents have adopted resolutions intended to curb and eliminate false and misleading advertising among their members. This cooperation is fully appreciated by the Federal Trade Commission.

Effective cooperation has obtained throughout the year with the Food and Drug Administration of the Department of Agriculture, the Bureau of Standards of the Department of Commerce, and the Bureau of the Public Health Service of the Treasury Department.

Cases involving what appear to be fraudulent schemes in violation of the postal laws are referred to the Post Office Department. Action on such cases as are found to be under investigation by that Department is suspended pending the outcome of those proceedings.

Valuable scientific opinions have been rendered by the Food and Drug Administration, Bureau of the Public Health Service, and the Bureau of Standards; also many analyses and comments regarding the therapeutic properties of various preparations have been furnished by the Food and Drug Administration. In a number of cases action against advertisers of medical preparations has been undertaken at the request of the Department of Agriculture.

Comparison of the advertising columns of current magazines with the same magazines a few years ago shows a marked improvement in the class and text of current advertising. This is evidence of effective work accomplished; but further examination of current advertising by national advertisers, drug and cosmetic vendors and other mail-order merchants, over the radio, in daily papers and high-class magazines, as well as periodicals that still print anything for a price, discloses the great need for much more work, to protect the buying public and honest competitors.

INVESTIGATES AND REPORTS ON 547 CASES

During the fiscal year ended June 30, 1933, the special board of investigation investigated 547 cases. Questionnaires were sent to 297 advertisers, resulting in applications for complaint being docketed and complaints ordered in 87 cases in which the preparation and issuance of the complaints was deferred and the cases referred to the special board.

Two hundred and six stipulations were negotiated and reported to the Commission for approval. One hundred and thirty of these were with publishers, 74 with advertisers, and 2 with advertising agents.

Thirty-five cases were recommended for dismissal without prejudice.

Ninety-six cases are pending in which the Commission has ordered complaints and referred them to the board for further investigation, notice, hearings, and report.

PART VI. FOREIGN TRADE WORK

PROVISIONS OF THE EXPORT TRADE ACT

FIFTY WEBB LAW GROUPS IN OPERATION

WEBB LAW EXPORTS IN 1932

EFFECT OF N.I.R.A. ON WEBB LAW GROUPS

INFORMAL FOREIGN TRADE COMPLAINTS

TRUST LAWS AND UNFAIR COMPETITION ABROAD

PART VI. FOREIGN TRADE WORK

Foreign trade work of the Commission includes (1) administration of the export trade act commonly known as the Webb-Pomerene law, which permits the formation and operation of combinations in export trade; and (2) inquiries as to "trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States", under section 6 (h) of the Federal Trade Commission Act. This work is conducted by the Commission's export trade section under direction of the chief counsel.

PROVISIONS OF THE EXPORT TRADE ACT

Under this act, effective since April 1918, exemption is granted from the Sherman antitrust law and the Clayton Act to "an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association." The law requires such a group to file with the Commission copies of its organization papers and a first report with certain detailed information; thereafter annual reports are filed and such other information as the Commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals.

The law provides that an export association shall not restrain the trade of a domestic competitor, artifically or intentionally enhance or depress prices within the United States of commodities of the class exported by the association, substantially lessen competition, or otherwise restrain trade within the United States. Should the Commission have reason to believe that these provisions of the law have been violated, it may investigate and make recommendations for the readjustment of the association's business in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. In case of failure to comply with the Commission's recommendations, the matter may be referred to the Attorney General of the United States for such action as he may deem proper.

FIFTY WEBB LAW ASSOCIATIONS NOW IN OPERATION

Fifty export associations filed papers with the Commission under the Webb law during the first 6 months of 1933:

Alabama-Florida Pitch Pine Export Association, Whitney Building, New Orleans.

American Hardwood Exporters, Inc., Marine Building, New Orleans.

American Locomotive Sales Corporation, 30 Church Street, New York City.

American Paper Exports, Inc., 75 West Street, New York City.

American Pitch Pine Export Co., Pere Marquette Building, New Orleans.

American Provisions Export Co., 80 East Jackson Boulevard, Chicago.

American Soda Pulp Export Association, 230 Park Avenue, New York City.

American Soft Wheat Millers Export Corporation, 3261 K Street, Washington, D.C.

American Spring Manufacturers Export Association, 30 Church Street, New York City.

American Textile Trading Co., 1410 G Street, Washington, D.C.

American Tire Manufacturers Export Association, 30 Church Street, New York City.

American Webbing Manufacturers Export Association, 20 West Thirty-seventh Street, New York City.

California Dried Fruit Export Association, 1 Drumm Street, San Francisco.

Carbon Black Export Association, Inc., 60 East Forty-second Street, New York City.

Cement Export Co., The, Pennsylvania Building, Philadelphia.

Copper Export Association, Inc., 25 Broadway, New York City.

Copper Exporters, Inc., 33 Rector Street, New York City.

Douglas Fir Exploitation & Export Co., Henry Building, Seattle.

Durex Abrasives Corporation, 82 Beaver Street, New York City.

Electrical Apparatus Export Association, 31 Nassau Street, New York City.

Export Petroleum Association, Inc., 67 Wall Street, New York City.

Export Screw Association of the United States, Box 1242, Providence, R.I.

Florida Hard Rock Phosphate Export Association, Savannah Bank & Trust Building, Savannah, Ga.

Florida Pebble Phosphate Export Association, 393 Seventh Avenue, New York City.

General Milk Co., Inc., 19 Rector Street, New York City.

Goodyear Tire & Rubber Export Co., The, 1144 East Market Street, Akron, Ohio.

Grapefruit Distributors, Inc., Davenport, Fla.

Gulf Pitch Pine Export Association, Whitney Bank Building, New Orleans.

Hawkeye Pearl Button Export Co., 601 East Second Street, Muscatine, Iowa.

Metal Lath Export Association, The, 60 East Forty-second Street, New York City.

Northwest Dried Fruit Export Association, Title & Trust Building, Portland, Oreg.

Pacific Flour Export Co., care of Fisher Flouring Mills Co., Seattle.

Phosphate Export Association, 393 Seventh Avenue, New York City.

Pipe-Fittings & Valve Export Association, Branford, Conn.

Producers Linter Export Co., 822 Perdido Street, New Orleans.

Redwood Export Co., 405 Montgomery Street, San Francisco.

Rubber Export Association, The, 19 Goodyear Avenue, Akron, Ohio.

Shook Exporters Association, Stahlman Building, Nashville, Tenn.

Signal Export Association, 74 Trinity Place, New York City.
Standard Oil Export Corporation, 26 Broadway, New York City.
Steel Export Association of America, The, 75 West Street, New York City.
Sugar Export Corporation, 120 Wall Street, New York City.
Sulphur Export Corporation, 420 Lexington Avenue, New York City.
Textile Export Association of the United States, 40 Worth Street, New York City.
United States Alkali Export Association, Inc., 11 Broadway, New York City.
United States Handle Export Co., The, Piqua, Ohio.
Walnut Export Sales Co., Inc., Twelfth Street and Kaw River, Kansas City, Kans.
Walworth International Co., 19 Rector Street, New York City.
Western Plywood Export Co., Tacoma Building, Tacoma, Wash.
Zinc Export Association, 500 Fifth Avenue, New York City.

The Shook Exporters Association was formed during the current year for exporting wine shooks to Argentina, Uruguay, and Brazil. Offices are maintained in New York City, Nashville, Tenn., and Pekin, Ill. The member companies include the Chickasaw Wood Products Co., Memphis; Export Cooperage Co., Memphis; Rocky River Coal and Lumber Co., Nashville; Paducah Cooperage Co., Paducah, Ky.; Pekin Cooperage Co., Pekin, Ill., and J. H. Hamlen & Son of Portland, Me.

WEBB LAW EXPORTS IN 1932

Exports by Webb law associations in 1932 showed a substantial decrease under former years, due to the extreme depression in foreign markets. Decrease in money value was greater than that of volume because prices were much lower. One association reporting an export volume in 1932 closely approximating that in 1931 estimated the value as at least 33⅓ percent less in 1932.

Associations that reported last year a suspension of price agreements in order to permit members to sell at independent prices (the independent sales not included in Webb law totals) have continued that policy during the current year, resulting in a material decrease in Webb law totals under figures for 1929 and 1930.

Some companies found it impossible to meet the prices prevailing abroad, and others were forced to curtail their exports on account of import restrictions in foreign countries, including exchange control, import quota and license systems, increased duties, and in some cases total exclusion of products heretofore imported from this country. One of the older Webb law associations, in operation since 1919, reports that the problem of foreign exchange is "the most serious obstacle with which we have ever had to contend."

Associations shipping foodstuffs report heavy duties laid down in several of the larger consuming countries, amounting in some instances to more than the invoice value of the shipments. A "buyers'

market" still obtained in 1932 and payment was slow; but, as reported by one of the food exporters operating as an association:

> The members are in a better position to trade with the large foreign buying combinations; in some articles there is practically but one buyer; a considerable saving in operating expense is also possible.

Several of the larger associations exporting manufactured or semimanufactured products have found their business materially affected by the fact that import duties imposed in this country on the raw materials, have resulted in a decrease in the exportation of the finished products.

An association shipping trade-marked goods reports that its decrease in volume and value was due principally to the competition of manufacturing countries that have gone off the gold standard and therefore benefited in their production by the 30 to 35 percent reduction in the value of their currencies. Voluntary abstention from doing business had to be practiced also on our part owing to the extreme difficulties in getting payment for our exports, particularly in countries where exchange control commissions restrict the return of gold to this country.

Lumber exporters report a greatly decreasing demand with a corresponding decrease in price. But in spite of the depression and lack of business, cooperation of the mills regarding standardized exports and maintaining export prices was of great advantage. One association was able to reduce the "cost, insurance, and freight" value of its lumber products considerably during the year by collective freighting of the shipments, which made it possible to compete with forest products of Japan and other countries. Competition of Russian woods sold at low prices was difficult to meet. There is increasing demand for longer credit terms and great difficulty in meeting the hazardous credit situation. Business failures caused considerable loss. There is also an increasing tendency toward reclamation demands. Both the lumber and metal industries were affected by the further decrease in building operations abroad.

Each year associations report new plans by which exports may be more economically handled through cooperative effort. A report recently received states that—

> During the year a standardized service charge on invoices was adopted by most of our members. This took the place of previous irregular charges which were discriminatory. Cooperative measures were also taken through committees in negotiation with steamship line conferences regarding freight rates and with other bodies regarding exchange restrictions in foreign countries.

A more recently organized group shipping to South America reports that—

> The existence of our association undoubtedly prevented utter demoralization of sale prices on such business as was done. * * * Although our members

have for many years sold exclusively in United States currency and have enjoyed all the ordinary banking facilities current in such lines for years, it was found impossible by any one of our eight shippers to find any bank in the United States to discount drafts against these 1932 shipments, notwithstanding the fact that sales were in United States currency and the shipping documents covered by sight drafts against same, drawn on high type concerns in South America. * * * Practically all of these shipments were paid for in ordinary due course and the United States dollars were placed at disposal of the various shippers in this country in about the same length of time as was usual in normal times. * * * This business doubtless would have been lost to the United States and perhaps never recovered.

A comparison of Webb law exports for the years 1929, 1930, 1931, and 1932 is shown as follows:

Webb law exports by commodities are shown

Item	1929	1930	1931	1932
Metal and metal products, including copper, iron and steel, metal lath,[1] zinc, machinery, railway equipment, pipes and valves, screws, electrical apparatus,[2] and signal apparatus [2]	$271,000,000	$208,000,000	$100,000,000	$21,000,000
Products of mines and wells, crude sulphur, phosphate rock, petroleum products, and carbon black [1]	270,000,000	315,000,000	73,000,000	56,000,000
Lumber and wood products, pine, fir, redwood, walnut, hardwood, naval stores,[3] plywood, doors,[4] wooden tool handles, and barrel shooks [5]	26,000,000	22,500,000	35,400,000	8,000,000
Foodstuffs such as milk, meat, sugar, flour, rice,[6] sardines,[6] salmon,[4] fresh fruit,[3] dried fruit, and canned fruit [2]	67,100,000	40,500,000	32,500,000	24,000,000
Other manufactured goods such as rubber, paper, abrasives, cotton goods,[1] and linters, buttons, and chemicals	90,000,000	75,000,000	70,100,000	35,000,000
Total	724,100,000	661,000,000	311,000,000	144,000,000

[1] 1930, 1931, and 1932 only.
[2] 1931 and 1932 only.
[3] 1929 and 1930 only.
[4] 1929 only.
[5] 1932 only.
[6] 1929, 1930, and 1931 only.

EFFECT OF THE NATIONAL INDUSTRIAL RECOVERY ACT UPON WEBB LAW ASSOCIATIONS

Some question has been raised as to the effect of the National Industrial Recovery Act passed in June 1933 upon the Webb law and associations operating thereunder.

Webb law associations are continuing their operation, and new groups are being formed. So far, no Webb law association has entered into a Recovery Act code, although the companies and industries represented have taken part in the recovery program. It is too early as yet to construe the new law or to predict what its effect will be upon the Webb law and those acting under it.

INFORMAL FOREIGN TRADE COMPLAINTS UNDER SECTION 6 (H)

Inquiries made under section 6 (*h*) of the Federal Trade Commission Act included nine foreign trade complaints handled by his

office during the fiscal year ending June 30, 1933. These cases involve practices of American exporters (not Webb law associations) in their trade with foreign countries, reported in the first instance to the American consulates or trade attachés abroad and referred to the Commission by the State and Commerce Departments.

TRUST LAWS AND UNFAIR COMPETITION IN FOREIGN COUNTRIES

Also under section 6 (*h*) of the Federal Trade Commission Act, it has been our practice heretofore to give a résumé of trust laws and unfair competition in foreign countries during each current year. Due to recommendation of the Director of the Budget and the executive council as to economy in printing, this statement has been reduced to a bare recital of the recent measures. A mimeographed statement giving more detailed information as to these measures may be obtained upon request to the Commission.

Cartel regulation and unfair competition laws included:

Canadian unfair competition act, May 12, 1932, amending the trade-mark and design act of 1928.

Inquiries under the *Canadian* combines investigation act involving alleged violation by the Canadian basket pool, importers and distributors of British anthracite coal and buyers of Ontario-grown tobacco.

Chilean decree law of August 30, 1932, establishing a commissariat of subsistence and prices; and the foreign commerce law of August 23, 1932.

Costa Rican act of July 15, 1932, prohibiting certain monopolistic acts.

German unfair competition law further amended by decree of December 23, 1932, and acts dated May 12, 1933.

Hungarian cartel act, October 15, 1931, providing for a cartel commission and a cartel court.

Irish Free State control of manufactures act, October 31, 1932; and law of December 23, 1932, creating a prices commission.

Lithuanian law against unfair competition, August 1932.

Norwegian trust control of 1926 amended in 1932.

Polish cartel law, March 28, 1933, providing for a cartel court as part of the Supreme Court of Poland.

Recent antidumping measures may be noted:

Amendments to the *Canadian* law in 1930, 1931, and 1933 to further prevent exchange dumping.

Chinese dumping tax law of February 1931 made effective by enforcement rules in December 1932.

French Presidential decrees imposing compensation surtaxes on imports.

German emergency decree of January 1932 providing for exchange dumping duties.

British India, safeguarding of industries act, April 16, 1933.

Irish Free State, dumping and abnormal importation act of November 1931.

Newfoundland exchange dumping regulations of January 1933.

Spanish Presidential decree, September 1931, to offset surtaxes or import restrictions in other countries.

Further measures toward government regulation or monopolistic control of production and trade have included:

Argentine decree effective in April 1932 for control of grain-marketing operations.

Australian measures granting export bounties and subsidies.

Austrian decree of May 12, 1933, for control of export trade.

Brazilian decrees, November 1932, forbidding planting of coffee and limiting production of sugar.

Czechoslovakian act in 1932 for regulation of foreign trade.

Danish laws, March 1932 and March 1933, for control of sugar industry; and law of December 23, 1932, for control of exportation of cattle, swine, dairy products, and eggs.

Ecuador, decree of December 29, 1932, for export-control service.

Estonia, law of November 25, 1932, for Government regulation of private enterprise, control of prices and quality of goods, subsidies to be granted to exporters of agricultural products.

Finnish bounties on exports of butter and cheese under law of December 21, 1932.

French budget law of March 1933, providing Government price fixing on imports; Government monopoly of petroleum imports proposed.

British Guiana, ordinance in 1932 creating rice-marketing board.

Hungarian Government office for foreign trade established December 1, 1932 to grant export premiums.

Irish Free State, export bounties extended in December 1932.

Italian decree, December 7, 1932, for Government control of the building of new industrial establishments.

Latvian Government monopoly for exportation of hogs and bacon, under decree of October 4, 1932; and resolution of October 28 for Government control of exportation of butter.

Mexican federal marketing act, 1932, for control of production and transportation of vegetables. Farm products classed as "public utilities."

Netherlands emergency hog act, July 1932, and dairy crisis law of June 1932.

New Zealand compulsory wheat pool established in 1933.

Panama act creating export control service, December 1932.

Persian trade monopoly act of 1931 amended by acts in June and July 1932.

Poland, decree for control of importation and exportation of petroleum, October 12, 1932.

Rumanian syndicate of grain exporters under Government supervision, 1932.

South African tobacco act of 1932, providing complete Government control of the tobacco trade.

Swedish decree, July 28, 1932. Government to fix prices on surplus grain crop; decree effective in February 1933 for Government monopoly of importation of dairy products.

Turkish wheat stabilization plan under law of July 3, 1932.

Yugoslavian state monopolies act, effective in April 1932; amendment to law for control of trade in drugs, 1933, under which the price "must be in accord with the cost of production."

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FISCAL AFFAIRS

FISCAL AFFAIRS

APPROPRIATIONS AND EXPENDITURES

Appropriations available to the Commission for the fiscal year 1933, under the Independent Offices Act approved June 30, 1932, were $1,426,714.70; under the Fourth Deficiency Act approved June 16, 1933, $25,000; in all, $1,451,714.70. This sum was made up of three separate items: (1) $50,000 for salaries of the Commissioners, (2) $1,371,714.70 for the general work of the Commission, and (3) $30,000 for printing and binding.

Appropriations, expenditures, liabilities, and balances

	Amount available	Amount expended	Liabilities	Expenditures and liabilities	Balances
Federal Trade Commission, 1933:					
Salaries, Commissioners	$50,000.00	$38,971.60	$138.88	$39,110.48	$10,889.52
Printing and binding	30,000.00	7,307.40	12,692.60	20,000.00	10,000.00
All other authorized expenses	1,371,714.70	1,310,626.30	29,236.36	1,339,862.66	31,852.04
Total, fiscal year 1933	1,451,714.70	1,356,905.30	42,067.84	1,398,973.14	[1] 52,741.56
Unexpended balances:					
1932	72,141.07	47,734.84			24,406.23
1931–32	14,867.63	304.78			14,562.85
1931	1,120.17	6.63			1,126.80
Total	1,539,843.57	1,404,938.29			92,837.44

[1] Expenditures and liabilities for the year amounted to $1,398,973.14, which leaves a balance of $52,741.56, of which the sum of $25,000 is available for expenditures during the fiscal year 1934; $16,891.70 represents net vacancy impoundments; and $10,000 printing and binding funds which were not released for expenditure by the Bureau of the Budget, leaving an actual balance of $849.86.

Detailed statement of costs for the fiscal year ending June 30, 1933

	Salary	Travel expense	Other	Total
Commissioners	$38,971.60			$38,971.60
Clerks to Commissioners	11,301.59			11,301.59
Messengers to Commissioners	5,282.00			5,282.00
Total	55,555.19			55,555.19
Administration:				
Office of Secretary	27,140.86			27,140.86
Accounts and personnel section	19,051.85			19,051.85
Disbursing office section	6,776.21			6,776.21
Docket section	27,459.73			27,459.73
Editorial service	5,180.00			5,180.00
Hospital	1,746.17			1,746.17
Labor	5,430.72			5,430.72
Library section	8,268.10			8,268.10
Mails and files section	17,936.90			17,936.90
Messenger service	12,093.10			12,093.10
Publications section	21,199.09			21,199.09
Purchases and supplies section	9,170.35			9,170.35
Stenographic section	40,982.35			40,982.35
Communications			$4,853.96	4,853.96
Equipment			11,163.60	11,163.60
Heat and light			78.18	78.18
Miscellaneous			154.92	154.92

Detailed statement of costs for the fiscal year ending June 30, 1933—Continued

	Salary	Travel expense	Other	Total
Administration—Continued.				
Rents			$12,546.37	$12,546.37
Repairs			5,070.44	5,070.44
Reporting service			14,283.37	14,283.37
Supplies			6,331.42	6,331.42
Transportation things			413.79	413.79
Witness fees			605.20	605.20
Total	$202,435.43		55,501.25	257,936.68
Legal:				
Application for complaints	144,703.03	$8,668.32	347.20	153,718.55
Complaints	168,222.60	15,579.54	316.15	184,118.29
Export trade	7,864.57			7,864.57
Preliminary inquiries	70,457.27	7,141.68		77,598.95
Trade-practice conferences	27,952.35	1,115.90		29,068.25
Total	419,199.82	32,505.44	663.35	452,368.61
General investigations:				
Building materials	13,633.63	3,301.68		16,935.31
Cement	23,726.55	453.02		24,179.57
Chain stores	171,451.03	3,199.90		174,650.93
Cottonseed	21,119.06			21,119.06
Du Pont investments	8.29			8.29
Panhandle petroleum	607.20			607.20
Peanuts	312.71	1.00		313.71
Power and gas	283,604.84	64,607.13	277.43	348,489.40
Price bases	28,122.97	1,802.77		29,925.74
Securities	737.93			737.93
Total	543,324.21	73,365.50	277.43	616,967.14
Printing and binding			22,110.67	22,110.67
Summary:				
Commissioners	55,555.19			55,555.19
Administration	202,435.43		55,501.25	257,936.68
Legal	419,199.82	32,505.44	663.35	452,368.61
General investigations	543,324.21	73,365.50	277.43	616,967.14
Printing and binding			22,110.67	22,110.67
Total	1,220,514.65	105,870.94	78,552.70	1,404,938.29

RECAPITULATION OF COSTS BY DIVISIONS

Administrative	$253,806.02		$62,553.33	$316,359.35
Economic	423,397.94	$66,220.78	322.43	489,941.15
Chief counsel	158,965.55	10,406.43	14,736.96	184,108.94
Chief examiner	254,861.12	23,608.72	665.86	279,135.70
Board of review	16,929.82			16,929.82
Special board of investigation	23,399.28			23,399.28
Trial examiner	61,000.40	4,519.11	6.50	65,526.01
Trade practice conference	28,154.52	1,115.90	267.62	29,538.04
Total	1,220,514.65	105,870.94	78,552.70	1,404,938.29

Appropriations available to the Commission, since its organization, and expenditures for the same period, together with the unexpended balances, are shown by the following table:

Year	Appropriations	Expenditures	Balance	Year	Appropriations	Expenditures	Balance
1915	$184,016.23	$90,442.05	$93,574.18	1925	$1,010,000.00	$1,008,998.80	$1,001.20
1916	430,964.08	379,927.41	51,036.67	1926	1,008,000.00	996,745.58	11,254.42
1917	567,025.92	472,501.20	94,524.72	1927	997,000.00	960,704.21	36,295.79
1918	1,608,865.92	1,452,187.32	156,678.60	1928	984,350.00	972,966.04	11,383.96
1919	1,753,530.75	1,522,331.95	231,198.50	1929	1,163,192.52	1,159,459.75	3,732.77
1920	1,305,708.82	1,120,301.32	185,407.80	1930	1,495,821.69	1,494,669.19	1,152.50
1921	1,032,005.67	938,664.69	93,340.89	1931	1,863,348.42	1,862,221.72	1,126.70
1922	1,026,150.54	956,116.50	70,034.04	1932	1,817,382.49	1,778,413.41	38,969.08
1923	974,480.32	970,119.66	4,360.66	1933	1,451,714.70	1,398,973.14	[1] 52,741.56
1924	1,010,000.00	977,018.28	32,981.72				

[1] See footnote, p. 141.

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